Supreme Court, U. S.
FILED
JUN 16 1980
MICHAEL RODAK, JR., CLERK

80-81

In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
PETITIONER

vs.

EPIFANIA PEREZ
RESPONDENT

DOCKET NUMBER:
ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF PUERTO RICO

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In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
Petitioner

vs.

EPIFANIA PEREZ
Respondent

DOCKET NUMBER:
on writ of Certiorari from the Supreme Court of Puerto Rico

I. OPINIONS DELIVERED BY THE COURT BELOW

The opinions delivered in the Courts below are as follows:

1. On August 3, 1977 the Superior Court of Puerto Rico entered a decree against the Petitioner ordering him to vacate the land and to abstain from disturbing Respondent's right as occupant of the land. This opinion is not reported.
2. On February 20, 1979 the Superior Court of Puerto Rico sustained the decree made on August 3, 1977. This opinion is not reported.
3. On October 18, 1979 the Supreme Court of Puerto Rico denied the Writ of Certiorari requested by Petitioner to review the Superior Court decision of February 20, 1979. This opinion is not reported.
4. On December 20, 1979 the Supreme Court of Puerto Rico denied appeal to review the decision of the Superior Court not to stay order to vacate which would come in effect on December 7, 1979. This opinion is not reported.
5. On February 28, 1980 the Superior Court of Puerto Rico denied motion to strike decree and order of August 3, 1977. This opinion is not reported.
6. On April 17, 1980 the Supreme Court of Puerto Rico denied the writ of Review filed by Petitioner. This opinion is not reported.

7. On May 15, 1980 the Supreme Court of Puerto Rico denied the Motion for reconsideration filed by the Petitioner. This opinion is not reported.
8. The opinions delivered by the Superior and Supreme Court of Puerto Rico are included as appendices. Petitioner has filed a Motion in the Supreme Court of Puerto Rico to obtain the official translation of the opinions entered by the Court as requested by Rule 23 and 37 of this Court.

II. CONCISE STATEMENT OF THE GROUND ON WHICH JURISDICTION IS INVOKED

1. The Superior Court of the Commonwealth of Puerto Rico decided against the Petitioner on August 3, 1977.
2. Petitioner filed a timely Review on April 12, 1980, which was denied and a Motion for Reconsideration before the Supreme Court of the Commonwealth of Puerto Rico which was denied on May 15, 1980. Petitioner filed a Motion of Reconsideration stating the federal question of violation of due process of law guaranteed by the 5th and 14th amendment on June 3, 1980. No motion for extention of time has been filed.
3. The statutory provision which grants the Supreme Court of the United States jurisdiction to review this judgement by writ of Certiorari is 28 U.S.C. Section 1258 (3).

III. QUESTIONS PRESENTED FOR REVIEW

A) *The Supreme Court of Puerto Rico disregarded Petitioner's right to due process of law guaranteed by the Fourteenth and/or Fifth amendment of the United States Constitution by denying him a hearing.*

The State Court deprived Petitioner of property without due process of law and therefore disregarded his right under the United States Constitution. The state court made no legal statement in regard to the Petitioner's right to compensation and Petitioner was denied due process of law guaranteed by the Forteenth Amendment and Fifth Amendment when he was denied a hearing to determine his rights to compensation as a good faith occupant.

The failure of the trial Court to make a finding on Petitioner's good faith in making improvements to the land was reversible error, in view of the state statute which establishes different compensations for the good and the bad faith occupant. A determination as to when and why Petitioner's possession was in bad or good faith is required in order to justly determine the statutory compensation.

The Superior Court decree on February 20, 1979 stated that both parties are "confessed squatters" but it did not apply the statutes which provides for the present situation when both parties are bad faith occupants.

This determination of the Court was based on the fact that the plot of land belongs to an unknown per-

son, not a party in this action. Neither party in this action claimed ownership, but only possession. Respondent by her own testimony, only lived for 3 or 4 weeks in a wooden shack she built on said land in 1974. In 1976, when the shack did no longer exist Petitioner entered into possession of the land and has occupied it as its owner, constructing a cement, wood and zinc house. The trial Court refused to hold a hearing whereby Petitioner could present proof as to his good faith and the time in which he was in good faith this would vary the degree of compensation to Petitioner according to the Puerto Rican Civil Code which we forthwith discuss.

The failure of the trial Court to hold a hearing where determinations of good faith, bad faith and time in each and compensation for any or both situations be made was a plain error and basis for reversal.

The Articule 300 of the Civil Code states:

> "Bad Faith of Both Parties - when there has existed bad faith, not only on the part of the person who build, sowed or planted on another's land, but also on the part of the owner of such land, the rights of both shall be the same as though both had acted in good faith" 31 L.P.R.A. 1167.

By the provision of the applicable state law, once the Superior Court held that both parties were confessed squatters and thereby both were bad faith occupants, the rights of each would be as if both has acted in good faith. The bad faith of both parties is cancelled, and the law states that in that situation

both parties will be considered in good faith. This brings us to the second phase.

The good faith occupant has property rights ascertained by state law and accepted by equity.

Article 297 of the Civil Codes States: "the owner of the land which has been built upon in good faith shall have the rights to appropriate as his own the work, *by previously paying to the owner of the work, the cost of materials and labor, or the cost of reproducing the work at the time the owner of the land exercises his right,* deducting depreciation, whichever is greater or to compel the person who constructed to pay the value of the land". 31 L.P.R.A.-1164 (Emphasis Added).

Article 382 of the Civil Code states:

> *"Necessary expenses are refunded to every possessor;* but *only the possessor in good faith may retain a thing until such expenses are made good to him.* Useful expenses are refunded to the possessor in good faith with the *same rights to retention,* it being at the option of the party who has defeated him in his possession to refund the amount of the expenses or to pay the increase in the value of the *thing* in *consequence* of *such expenses".* (Emphasis Supplied).

Article 383 States:

> "Expenses incurred purely for luxury or mere pleasure are not returnable to the possessor in good faith; but he may remove the ornaments with which he embellished the principal thing if it suffer no injury thereby, and *if his successor in the possession does not prefer to refund the amount expended".* 31 L.P.R.A. 1469 (Emphasis Added).

The right of good faith occupants to be compensated for improvements is also accepted in the federal jurisdiction.

In 42 C.F.S. Section 6 it is stated:

> "Even prior to the modified common law rule, it was the rule under the civil law, on the broad principle of equity, that no one ought to enrich himself at the expense of another, that, were one made permanent improvements on land in his possession under a bona fide belief of ownership, he was entitled to full compensation therefore, less a fair compensation for rents and profits during the period of occupancy, *before the owner of the property could recover the same.* Courts of equity, following the Civil law rule, and applying the principle that he who seeks equity must do equity, held that were an owner of land is required to come into a court of equity to seek a relief as, for instance, to recover the land or obtain an accounting for rents and profits, he must make compensation to the bona fide occupant as a condition to his obtaining the relief sought, the occupant's right to compensation being governed by the particular facts of each case. *The right to compensation exists under the principle of equity independently of the statutory provisions which expressly grant it in certain actions or in certain cases".* (Emphasis Added)

In 42 Corpus Juris Secundum further states in Section 6 (b) that:

> "The reason and justice of recognizing betterment rights as well as the harshness and inequity of the common law in many cases, has resulted in many, perhaps most, jurisdictions, in the enact-

ment of statutes generally known as "betterment acts" or as "occupancy claimant laws" which expressly grant and in some cases enlarge, the rights of the bona fide occupants in respect of compensation for improvements. The general effect of the statutes, however is to compel the owner of the land to pay to the bona fide occupant the amount due for improvements over and above the value of rents and profits during the period of occupancy, as a conditions to his recovery of, or entry on, the land, whether by ejectment, tresspass to try title or other possessory proceedings or as a conditions to his recovery in a suit against the occupant for removing the improvements. The constitutionality of these statutes has generally been upheld". (Also, see 41 American Jurisdiction 3d. Sections 5 and 6.)

The essential requirements for the bona fide occupant's, right to compensation are:

a. good faith-which required his honest and reasonable belief in his claim to ownership.

b. possession- the person must have been in the possession of the land at the time the improvements were made and be in possession at the time the claim is made.

c. color of title or claim of title- "ordinarily to constitute color or title to land, the occupant should have paper title, but this in the absence of a statutory requirements is not always necessary, for color of title may be based on adverse possession under a bona fide claim of title and under the express provisions of some statutes a person has color of title who has

occupied the land for a prescribed, number of years or for a less time if he has made improvements with the owner's knowledge and consent. *Adverse claim of title, as distinguished from color or title, need not be evidenced by a writing*" 42 Corpus Juris Secundum, Section 7. (Emphasis Added)

d. the person entitled to compensation is the owner of the improvements at the time he seeks recovery.

In the present case Petitioner complied with all these essential requirements. Petitioner believed that the plot of land was without owner or occupant and therefore occupied it in October 1976 with the belief that he was the sole possessor of the land. Petitioner occupied the land since October 1976 until present, in that period of time he has made the improvement.s Both parties, Petitioner and Respondent are squatters and they have no written title to the plot of land, but claim possession which under the law of Puerto Rico entitles the occupant to become owner of the land after a number of years. 31 L.P.R.A. 5280.

In *Searl vs. School District*, 133 U.S. 553, this court held that a bonafide occupant had a right to be compensated for the improvements he made in the land of another. This Court declared:

"...and Court of equity, in accord with the principles of the Civil law, when their aid is sought by the real owner, compel him to make allowance for permanent improvements made bonafide by the party lawfully in possession under a defective

> title. The Civil Law recognized the principle of reimbursing to the bonafide possesor the expense of his improvements if he was removed from his possession by the legal owner, by allowing him the increase in the value of the land created thereby. And the betterment laws of the several states proceed upon that equitable view. The right to recovery, when the occupant in good faith believes himself to be the owner, is declared to stand upon a principle of natural justice and equity and such laws are held not to be unconstitutional as impairing vested rights, since they adjust the equities of the parties as nearly as possible according to natural justice and in its application as a shield of protection, the term "vested rights" is not used in any narrow sense, but as implying a vested interest of which the individual cannot be deprived arbitrarily without injustice"

The Petitioner requested the Superior Court and the Supreme Court of Puerto Rico to hold a hearing to determine the Petitioner's right to compensation as the state law recognizes. This was requested by Petitioner several times. On the Motion to Strike Order to Vacate of August 1, 1979, on the Certiorari filed at the Supreme Court of Puerto Rico on September 27, 1979, on Motion to Strike Decree and Order to Vacate filed on December 4, 1979; on a Memorandum of Law filed at the Superior Court in February 15, 1980, in the Writ of Review filed in the Supreme Court of Puerto Rico on March 26, 1980, on the Motion of Reconsideration filed in the Supreme Court of Puerto Rico on May 1st., 1980 and the Motion of Reconsideration filed in the Supreme Court on June 3, 1980. The

Superior Court and the Supreme Court denied Petitioner's request of due process of law in regard to compensation.

Petitioner was never granted a hearing on the merits of their case; both hearings in the case: the hearings on March 18, 1977, December 19, 1978 and January 15, 1979 and the hearing on January 18, 1980 were limited. On the first set of hearings the issue was limited by the Court to Petitioner's claim that he was not served summons to the action. On the hearing held on January 18, 1980 the issue was limited by the Court to Petitioner's claim that respondent had committed fraud.

In *Fuentes* vs. *Shevin*, 407 U.S. 67, at page 80, this court held:

> "The Constitutional Right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. It purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment- to minimize substantively unfair or mistaken deprivation of property, a danger that is especially great when the state seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government interference".

The Court also stated in *Fuentes*, at p. 86,

> "The Fourteenth Amendment's protection of property, however, *has never been interpreted to safeguard only the rights of undisputed ownership.* Rather it has been read broadly to extend protection to *"any significant property interest"*. (Emphasis Supplied)

In Eagle vs. *Koch*, 471 Federal Supp 175. the Court held unconstitutional a law which did not provide appropriate hearing to peedler's before they were deprived of their goods. The Court declared:

> "In sum, local law No. 77 itself has no provision for a hearing upon confiscation of property under exigent circumstances. Therefore, the law does not withstand constitutional attack unless a hearing is otherwise provided".

In the present case, the Court did not allow a hearing to provide due process of law to Petitioner before his being deprived of the house he built in the plot of land and the improvements he made to the land.

In *N.A.A.C.P. v. Alabama* (357 U.S. 449 at page 463) the Court held:

> "It is not of moment that the state has acted soley through its judicial branch, for whether legislative or judicial, it is the application of state power which we are asked to scrutinize".

In *Culp vs. U.S.*, 131 F 2d 293, the Court held that the right not to be deprived of property without due process of law is a fundamental right.

In *Mathew vs. Elridge*, 424 US 319, this Court declared:

> "This Court has consistently held that some form of hearing is required before an individual is finally deprived of a property interest. *Wolff* vs. *Mc Donnel*, 418 US 539, 557-558, see e.g., *Phillips vs. Commissioner*, 283 US 589. See also *Dent vs. West Virginia*, 129 US 114."

A hearing should be ordered to guarantee the Petitioner's right to be compensated for the house he built and for the necessary and useful expenditures made by the Petitioner, with the right of retention of the property until he is indemnified by the Respondent. Petitioner also has the right to be compensated for the luxury or recreation expenditures made in the property if Respondent wishes to keep them.

A Certiorari must be granted in this case so that this Court may review the decision of the Supreme Court of Puerto Rico which disregarded Petitioner's rights to due process of law guarantee by the Fourteenth and Fifth Amendment.

In the alternative that this Court sould sustain the Superior Court decree that Petitioner was a bad faith occupant, the state law, provides right to compensation for the necessary expenditures for the conservation of the land, 31 L.P.R.A. 1468 and for the expenses incurred for luxury or mere pleasure if the Respondent wanted to keep them. 31 L.P.R.A. 1470.

Petitioner's was denied due process of law guaranteed by the Fourteenth Amendment because he was denied a hearing in which his right to compensation even as a bad faith occupant, would be determined.

The State Court did not establish at what time did Petitioner become a bad faith occupant and his right

to be compensated as bonafide occupant prior to becoming a bad faith occupant, 31 L.P.R.A. 1425.

In the present case, the State Court never held a hearing, nor made a determination in regard to the exact time when Petitioner became a bad faith occupant. This is of particular relevance in this case because the Puerto Rico law provides that "good faith is always presumed and any person averring bad faith on the part of the possession is bound to prove the same". 31 L.P.R.A. 1425.

The presumption of good faith protected Petitioner's acts until he was notitied of an adverse claim of possession by Respondent. The expenditures which Petitioner made until the notification of this action are bonafide and therefore, protected by the Statutes which provide compensation to good faith possessors, 31 L.P.R.A. 1164, 1468 and 1469.

In 42 C.J.S. Sec. 7-4(a) Improvements, states:

> "As a general Rule an occupant of land is not a possessor in good faith and hence is not entitled to compensation for improvements *which he makes thereon after he has notice* or *knowledge* of an *adverse title...*" (emphasis supplied.

In 42 Corpus Juris Secundum it also states:

> "Under some statutes, the occupant may recover for improvements which he made in good faith prior to notice of the adverse claim of title as, where he has been a possessor in good faith, he *ceases to be such only from the moment when knowledge or notice of the defects in his title are imparted to him.* And although ordinarily the recovery is limited to improvements made before

> notice of plaintiff's superior adverse claim, where an improvement is substantially completed at the time of receipt of notice of another's claim to the land, and completion is necessary to preserve the improvement and make it useful and valuable, the possessor may complete it and set off the value of the completed improvement". (Emphasis Supplied).

The doctrine which Corpus Juris Secundum exposes is the one that the Supreme Court of Puerto Rico has accepted. That is, that the possessor is considered as bonafide until he is notified of an adverse claim.

In *Díaz* vs. *Delgado*, 41 P.R.R. 827, the court held

> "We do not agree, since one of the premises on which this argument is based is the good faith of the defendants up to the time of the rendition of judgement, *whereas under the law and the jurisprudence, once the judgement* has *been rendered,* such *good faith can only be deemed* to have *existed up to the* day on which defendants were summoned in the action of redemption."

Section 438 of the Civil Code in force says:

> "It is presumed that possession is continued under the same understanding by which it was acquired, until the contrary be proven".

In his commentaries on Article 435 of the former Civil Code, equivalent to Section 438, Supra, Manresa expressed himself as follows:

> "Possessor in good faith converted into possessor in bad faith- Under Article 435 a possessor in good faith becomes a possessor in bad faith from the moment he becomes aware that his possession is wrongful, as stated by

> us when commenting on the said article. Similarly as to a defeated possessor, from the time he is first judicially summoned".

The rules set forth above concerning the possessor in good faith control up to the time such possession is considered lost; thereafter, the Rules relating to the possession in bad faith must be applied. 4 Manresa, Commentaries on the Spanish Civil Code, 2 nd. Ed., p. 274".

It is necessary to conclude that Petitioner must be compensated for the improvements that he made as a bonafide occupant prior to being notified of the present action filed by Respondent. Thereby, Petitioner is entiled to compensation for what Petitioner built prior to being notified of this action, 31 L.P.R.A. 1164, and for the necessary and useful expenses prior to notification of this action, 31 L.P.R.A. 1468, with the right to retain the property until he is duly refunded.

Even as a bad faith possessor the state law provides compensation for Petitioner for certain expenditures. The Civil Code States that "necessary expenses are refunded to every possesor" 31 L.P.R.A. 1468 (Emphasis Supplied).

The State law also provides:

> "A possessor in bad faith... shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thing. Expenses incurred in improvements for luxury and pleasure, shall not be refunded to the

possessor in bad faith, but he may remove the objects for which such expenses have been incurred, provided, the thing suffers no injury thereby, and *the lawful possessor does not prefer to retain them and pay the value they may have at the time he enters into possession*". 31 L.P.R.A. 1470 (Emphasis Supplied).

Petitioner was denied the right to compensation for the expenses he incurred as a bona fide possessor and as a bad faith occupant which the law states. Thus, his right to due process before being deprived of his property guaranteed by the Fourteenth and Fifth Amendment of the United States Constitution was violated.

The right to compensation as established by the state law was applied in *Santos Green v. Cruz*, 100 P.R.R. 9, where the Supreme Court of Puerto Rico established:

> "The circumstances set forth show that, upon taking possession of the property before the judicial approval of the lease in question was obtained, Guillermo Cruz was aware of the defect in his title consisting in the absence of said approval, which was required because the owners of the greater part of the property were minors. Therefore, he is a possessor in bad faith of said property. (Section 363 of the Civil Code 31 L.P.R.A. 1424). By virtue thereof his right concerning the improvements he might have made in the property and in regard to the fruits is defined in Article 384 of the Civil Code, 31 L.P.R.A. 1470".

In that case the Court held:

> "Also, the case should be remanded to the trial Court to determine in the light of the evidence adduced, Cruz liability as such possessor in bad faith *as well as apellant -appellee's rights resulting from such condition*". (Emphasis supplied).

Petitioner's right to compensation was violated and thus his property was taken without due process of law as no hearing was held to determine his compensation.

B) *Petitioner has a right to compensation that has been violated by the State Courts constituting this fact unjust enrichment in violation of the due process law clause of the Fifth and Fourteenth amendment of the United States and the rules of equity.*

Initially by the rules of the common law, whoever put improvements on real estate did so at his peril. Even though he acted in good faith and in the honest conviction that the land was his, whenever another party judicially established his title to the land, such party had a right to all the improvements situated upon it without any obligation to compensate the improver. *Thompson* v. *Illinois* 129NE55; *Hall* v. *Boatright* 36SE1001.

Under the rules of the civil laws, norms were more liberal. It permitted one who had made permanent improvements on land in his possession, to compensation for the value of such improvements. *Searl* v. *School District*, 133 VS 553; *Valle* v. *Fleming*, 29 MO 152.

Chancery borrowed the rule of natural equity from the civil law. *Searl* v. *School District*, supra. Where such owner had only an equitable title and was compelled to sue in equity for a recovery of the land, the court refused its aid to the complainant, except on the terms of compensation to the occupant for this improvements, on the principle that he who seeds equity must do equity. *Schleider* v. *Schleider*, 104 ALR 572; *Kester* v. *Bostwick*, 15 SO 2nd 201; *41 Am. Jr.* 2d Section 5, pg. 482-483.

Such is the birth of Betterments acts such as the sections discussed in our first question presented for review, 31 LPRA 1468, 1167, 1164, 1469 and 1470.

They are founded on equitable grounds and proceed on the theory that no one should be made richer at the expenses of another. *Searl* v. *School District*, supra; *Numitor Gold Mine Co.* v. *Katzer*, 256 P 464, *Cleland v. Clark*, 81 NW 1086.

In *Pritchard* v. *Williams* 96SE733, the Court stated:

> "The right to betterments is based on the obvious principle of justice that the owner of the land has not just claim to anything except the land itself. If the claimant, acting under an erroneous but honest and reasonable belief that he is the owner, makes valuable and permanent improvements, *the true owner should not take them without compensation.*" (Emphasis Supplied).

Betterment statutes are remedial in character. *Kester* v. *Bostwick*, supra. They should be liberally construed the purpose of securing an equitable and fair adjustment of the rights of the parties. *Meyers* v. *Canutt*, 46, NW 2d 72; *Stumps* v. *Hornback*, 18 SW 37.

NW 2d 72; *Stumps* v. *Hornback*, 18 SW 37.

Even in jurisdictions where no betterments act such as the ones in the Civil Code of Puerto Rico exist, courts of equity have exercised jurisdiction under general principles of equity for the purpose of affording relief to an occupying claimant in respect to improvements made by him. They have taken cognizance of suits brought by an occupying claimant as plaintiff against the time owner of the land to recover for improvements. See, *Schleider* v. *Schleider*, supra, *Valle* v. *Fleming*, supra, *McKelway* v. *Armour*, 10 NJ Eg. 115, *Rhyne* v. *Sheppard*, 32 SE 2d 316; *Herring* v. *Pollard*, 23 Tenn. 362.

Under the rule of avoiding an unjust enrichment, several cases have been decided whereby an owner will not be permitted to claim improvements if these were erected on the state in good faith and with the tolerance of the rightful owner. See *Goode* v. *Gaines*, 145 VS 141; *Gibson* v. *Herriot*, 55 Ark 85; *Burron* v. *Carlus*, 210 Col 95; *Williams* v. *Vanderbilt*, 145 Ill 238; *Loeb* v. *Conley* 169 SW 575.

Although the silence of the owner under such circumstances does not operate in itself to transfer the title to the improved premises to the improver, equity can compel the owner to either pay for the improvements or surrender his title on receiving compensation. *Carolina C.R., Co.* v. *McCaskitl*, 94 NC 746; 76 ALR 309. Equity acts in these respects on the principle that an unjust enrichment should be prevented. See, *Bright* v. *Boyd*, 1 Story 478; *Olin* v. *Reineche, 168 NE 676; Warwick* v. *Harvey,*, 68 ALR 284 *Pakulski* v. *Ludwiezwski*, 289 NW 231; *Rhyne* v. *Sheppard*, 32 SE 2d 316; *Preston* v. *Brown*, 35 Ohio St. 18.

The rule of unjust enrichment is also founded on the maxim that when one person confers a benefit on another through a mistake, whether of law or fact, the other is liable to make restitutions. See *Duffy* v. *Scott*, 292 NW 273. Generally, the object to the attained is the prevention of unjust enrichment of defendant and the securing for plaintiff of that to which he is justly and in good conscience entitled. *Glandowski* v. *Felczak*, 31 A 2d 718; *Lauffer* v. *Vial*, 33 A 2d 777.

A person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Duffy* v. *Scott*, supra.

Case law has not made necessary that in order to create an obligation to make restitution, that the party unjustly enriched should have been guilty of any tortious or fraudulent act. (*Bill* v. *Gattavara*, 209 2d 457). The question posed in such cases is: Did he, to the detriment of someone else, obtain something of value to which he was not entitled? Such is the questions we pose before this Court today.

It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. See *Franks* v. *Lockwood*, 150 A 2d 215; *Mehl* v. *Norton*, 113 ALR 1055; *US Rubber* v. *Batesburg*, 110 ALR 144; *Duffy* v. *Scott*, supra.

No violation of law or opposition to public policy, directly or indirectly is present in this case.

In *Hill* v. *Waxberg*, 237 F 2d 936 (9th Cir. 1956) the Court discussed the differences between an implied in law and in fact contracts and stated:

> "An implied in law" contract, is a fiction of the law which is based on the maxim that one who is unjustly enriched at the expense of another is required to make restitution to the other. The intentions of the parties have little or no influence on the determination of the proper measure of damages. In the absence of fraud or other tortious conduct on the part of the person enriched, restitution is properly limited to the value of the benefit which was acquired." (ibid at page 939).

See also, *Martin* v. *Campanaro*, 156 F 2d 127 (2d Cir. 1946)

In *Monagas* v. *Vidal*, 170 F 2d 99 (1st. circuit, 1948) the Circuit Court of Appeals for the First Circuit Reviewed a judgement of the Supreme Court of Puerto Rico. Such was the procedure prior to the establishment of the Commonwealth. Review of said decisions since then is done by the Supreme Court of the United States.

In said case the reviewing Court examined the interpretation of Puerto Rican statute by the Supreme Court of Puerto Rico in order to conclude if it was "inescapably wrong" or "patently enormeous". See *Bonet* v. *Texas Co.* 84LED 401; *De Castro* v. *Board of Commissioners* 322 VS 451 "or plainly inconsistent with established principles of local law". (*De Castro* v. *Board*, at page 1384.)

A similar determination should be made in this case as the decision of the Supreme Court of Puerto Rico in the case at bar not only is in disagreement with its own previous decisions, as discussed previously in this unit, but in disagreement with the holdings of the Supreme Court of the United States in *Searl* v. *School District*, supra and others and in disagreement with decisions in other states. See the Court in *Monagas* v. *Vidal*, supra, concluded:

> "It is our function to reverse that Court (the Supreme Court of Puerto Rico) in such a matter only when we are forced to the conclusion that *the result reached below cannot be justified on any logical ground*".

(Emphasis Supplied)

Petitioner believe that such are the facts in the case at bar as the decision is an interpretation of local law that causes an unjust enrichment with prejudice towards Petitioner.

Petitioner thus request that the judgement of the Supreme Court of the Commonwealth of Puerto Rico be reversed and remanded with orders that a hearing be held solely for the purpose of determining Petitioner's right to specific compensation under the sections of the Puerto Rico Civil Code.

C) *The interpretation given by the State Court to the Section 32 LPRA 3561-66 of the Code of Civil Procedure as applied are unconstitutional as it allows for the taking of property without the due process of law guaranteed by the Fifth and Fourteenth Amendments of the Federal Constitution.*

As previously stated, 31 LPRA 1468, established the rights of a good faith possessor. 31 LPRA Section 1167 establishes that when both parties are in bad faith, these are mutually cancelled and both revert to a good faith status, guaranteeing them the rights established in 31 LPRA 1468. Finally 31 LPRA 1468 also established the rights of a bad faith possessor relative to necessary expenses incurred while in possession of the real property.

All these rights and protections of the good or bad faith possessors, established in the Civil Code have been made inapplicable and denied to the Petitioner as he was not afforded a hearing on such matters in the Injunction for the recovery of possession of real properly filed by Plaintiff-Respondent. (32 LPRA Section 3561 to 3566).

Such an interpretation or application of the Injunction procedure make it an unconstitutional statute as it allows for the taking of property without due process of law.

Petitioner has not been able to prove he was a good faith possessor for a specific period of time thereby being due the compensation established in 31 LPRA 1468 relative to the necessary and useful expenses, and accrued value and the right of retention until duly compensated for the expenses incurred and improvements made.

Petitioner was deprived of his due process right through a procedure established in a state statute whereby in addition to the inmediate possession, the Superior Court of Puerto Rico determined through

dismissing all arguments and allegations that there was a need for a hearing to determine the rights of compensation provided in the previously cited sections of the Civil Code. The State Courts refused to provide a hearing thereby restricting the Possessory Injunction (32 LPRA 3561 to 3566) to an unconstitutional procedural statute as it allows for the taking of property without due process of law.

Petitioners specifically refer this court once again to its holding in *Fuentes* v. *Shevin*, supra.

In June 3, 1980 Petitioner filed a Motion of Reconsideration before the Supreme Court of Puerto Rico on the ground that the decision to apply 32 L.P.R.A. Section 3561-3566 of the Code of Civil Procedure as denying rights to Petitioner to be compensated, violated his rights guaranteed by the Fifth and Fourteenth Amendment to the U.S. Constitution.

To apply the Sections of the Code of Civil Procecure as precluding a right to compensation is violative of due process of law. Also this interpretation would go against the right of a bona fide occupant to a retention of the property until he has been compensated for the necessary and useful expenses, 31 L.P.R.A. 1468 and for the buildings he has done, 31 L.P.R.A. 1164.

Since bona fide occupant has a right to the retention of the property until he has been payed for the necessary and useful expenses and for the buildings he has done on the land, 31 L.P.R.A. 1468 and 1164, the Court is violating Petitioner's right, because he was ordered to vacate the property without being

payed the improvements he made as a bona fide occupant.

The decision in this case goes against the Petitioner's rights, which the State Statute recognizes to bona fide, and bad faith occupant's and violates the Fifth and Fourteenth Amendment to the United States Constitution.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The right to due process of law guaranteed, by the Fourteenth Amendment Section 1 of the United States Constitution which states: "nor shall any state deprive any person of life, liberty or property, without due process of law..." U.S.C.S. •Constitution Amendment 14, page 444.

The right to due process of law guaranteed by the Fifth Amendment to the United States Constitution which states: "nor shall any person... be deprived of life, liberty or property, without due process of law". U.S.C.A. Constitution Amendment 5, page 4.

In the state law, the Civil Code statutes:

Article 300-- "when there has existed bad faith, not only on the part of the persons who built, sowed or planted on another's land but also on the part of the owner of such land the right of both shall be the same as though both had acted in good faith" 31 L.P.R.A. 1167, page 46.

Article 297-- "the owner of the land which has been built upon in good faith shall have the right to appropriate as his own the work, by previously pay-

ing to the owner of the work the cost of materials and labor, or the cost of reproducing the work at the time the owner of the land exercised his right, deducting depreciation whichever is greater to compel the person who constructed to pay the value of the land" 31 L.P.R.A. 1164, page 38.

Article 382-- "necessary expenses are refunded to every possessor; but only the possessor in good faith may retain a thing until such expenses are made good to him; useful expenses are refunded to the possessor in good faith with the same right to retention, it being at the option of the party who has defeated him in his possession to refund the amount of the expenses or to pay the increase in the value of the thing in consequence of such expenses". 31 L.P.R.A. 1468, page 118.

Article 383-- "expenses incurred purely for luxury or mere pleasure are not returnable to the possessor in good faith but he may remove the ornaments with which he embellished the principal thing if it suffer no injury thereby, and if his successor in the possession does not prefer to refund the amount expended". 31 L.P.R.A 1469, page 120.

Article 364-- "good faith is always presumed, and any person averring bad faith on the part of a possesor is bound to prove the same" 31 L.P.R.A. 1425, page 104.

Article 384-- "a possessor in bad faith... shall only have the right to be reimbursed for the necessary expenses incurred in the preservation of the thing. Expenses incurred in improvements for luxury and pleasure shall not be refunded to the possessor in bad faith but he may remove the objects for which such

expenses have been incurred, provided the thing suffers no injury thereby, and the lawful possessor does not prefer to retain them and pay the value they may have at the time he enters into possession". 31 L.P.R.A. 1470, page 120.

Article 690-- When injunction granted

An injuction for the retention or recovery of material possession of real property shall be granted on petition of the interested party provided he shows to the satisfaction of the court that he has been disturbed in his possession or tenancy of said property by acts showing intention of disturbing or depriving him of such possession, or when he has already been deprived of said possession or tenancy. 32 LPRA 3561 page 731.

Article 691-- Contents of complaint

The complaint shall be drafted and sworn to, pursuant to the provisions of the Code of Civil Procedures and shall set forth:

(1) That the complainant was within the year preceding the filing of the complaint in the actual possession of the property described in said complaint if it is sought to recover it, and was and is in possession thereof if it is sought to retain it.

(2) That he has been disturbed or deprived of the said possession or tenancy.

He shall also describe clearly the facts constituting the disturbance or deprivation and whether said acts were committed by the defendant or by some other person by order of the said defendant. 32 LPRA 3562. page 739.

Article 692-- Date for hearing; summons

The court shall set a date for a hearing upon such complaint, which date shall be within the following fifteen days, and the defendant shall be summoned at least eight days prior to the date set for such hearing. 32 LPRA 3563, page 743.

Article 693-- *Motions*

All motions or demurrers shall be filed and heard at the time of said hearing. 32 LPRA 3564 Page 743.

Article 694-- *Judgement; costs*

The court shall render judgment without undue delay. Costs shall be taxed against the party against whom judgment is rendered. 32 LPRA 3565 Page 743.

Article 695-- *Form of injunction*

Such injunction shall direct that the plaintiff be restored to possession and shall require the distuber to abstain in future from the commission of such acts, or of others which show the same intent, and shall warn him that disobedience of such injunction shall constitute contempt of court. 32 LPRA 3566 Page 747.

V. STATEMENT OF THE CASE

On June or July of 1974 Respondent occupied a plot of land in a suburb of Guaynabo, Puerto Rico known as Villa Isleña.

Respondent occupied the land as a squatter because she was not the lawful owner of this land and has never claimed to be such. Respondent occupied that land for approximately 3 to 4 weeks to a month and built a shack there and left four posts of wood in the

land. She had a problem with her son and left the plot of land, on 1974.

On October 1976, the Petitioner occupied a portion of the plot of land that the Respondent had occupied in 1974 but had left three weeks to a month later. Petitioner inmediately built a room which he later extended, where he lives with his family. Petitioner occupied the plot of land also as a squatter in the belief that the land was vacant because he did not find any structure or house in that land. The only thing that was left in the land were pieces of wood that were laying among the grass and the untilled plot of land.

Petitioner continued building and improving the plot of land and made a house of wood and concrete consisting of three bedrooms, two baths, a kitchen, a porch, a dinning room of an approximate value of $10,000, where he actually lives with his family.

On October 21, 1976, Respondent filed an injunction against the Petitioner claiming that the Petitioner was disturbing her occupant rights to the plot of land and claiming that the Petitioner had built on top of the post that she had left on the plot of land when she left on 1974.

On December 1st., 1976 the Petitioner was held in the default because he did not answer the injunction filed by Respondent.

On March 18, 1977 a hearing on default was held in which Respondent was the sole witness.

On August 3, 1977 the Superior Court of Puerto Rico issued a decree against the Petitioner ordering

him to vacate the land and to abstain from disturbing Respondent's right as occupant of the land.

This sentence was never notified to the Petitioner because it was returned from the Guaynabo Post Office as unclaimed to the Superior Court.

On March 27, 1978 the Superior Court of Puerto Rico ordered the Petitioner and his family to vacate the plot of land.

On August, 1978 Petitioner wife's was notified by the Court Marshall that the Petitioner and his family had until September 6, 1978 to vacate the land.

On September 1st., 1978 Petitioner filed a Motion to strike the order to vacate and the decree against him challenging the summons on the ground that he was never notified of the complaint.

On December 19, 1978 and January 15, 1979 hearings were held in regard to the motion filed by Petitioner.

On February 20, 1979, the Superior Court decreed that both parties were squatters and denied the motion to strike the decree and order to vacate against Petitioner.

On July 23, 1979 Respondent moved the Court for an order to vacate against Petitioner.

On August 1st., 1979, Petitioner filed opposition to motion to vacate of Respondent in which he claimed his rights to compensation for what he had built in the land.

Petitioner claimed that the decree of the Superior Court was erroneous and alleged that Petitioner had a right to compensation before he vacated the land

guaranteed by the Civil Code Statutes and the doctrine of unjust enrichment.

On August 13, 1979 the Superior court sustained its decree of February 20, 1979.

On September 24, 1979 the Petitioner filed writ of Certiorari in the Puerto Rico Supreme Court alleging right to compensation guaranteed by the Civil Code Statutes and the doctrine of unjust enrichment.

On October 14, 1979 Respondent filed opposition to Certiorari.

On October 18, 1979 the Puerto Rico Supreme Court denied Certiorari.

On December 4, 1979 the Petitioner filed a motion to strike order of March 27, 1978 and decree of the Superior Court of August 3, 1977 in which he claimed his rights to due process under the Puerto Rican constitution Art. II Section VII to be compensated before depriving him of property.

Petitioner claimed that Respondent had commited fraud by claiming that Petitioner had not built any structure in the plot of land knowing this to be false. Also that Petitioner was never notified of the Motion to default or of the default order of the Court. Petitioner claimed that he was never notified of the decree of the Court of August 3, 1977 and that the decree was not final because of this.

Petitioner claimed he had a right to due process of law under the State Constitution which would determine the compensation for the house he had built in the plot of land and from all the improvements he had done to the land and for the necessary and ordinary expenditures he had made for the conservation of

the land. Petitioner requested a stay of the order to vacate which would come in effect on December 7, 1979.

The Superior Court did not order the stay to the order to vacate.

On December 10, 1979 the Petitioner filed an Appeal before the Puerto Rico Supreme Court requiring the Supreme Court to review the decision of the Superior Court not to stay the order to vacate. In this Appeal Petitioner claimed his right to due process of law under the Puerto Rico constitution had been violated. He claimed that before depriving him of his house he should be compensated.

On December 20, 1979 the Puerto Rico Supreme Court denied the Appeal.

On December 27, 1979 Petitioner requested the Superior Court to hold a hearing in the Motion to vacate the order and decree filed on December 4, 1979.

On January 18, 1980 a hearing was held to consider the Motion to vacate the order and decree.

On February 28, 1980 the Superior Court of Puerto Rico denied the Motion to vacate the Order and decree.

On March 26, 1980 the Petitioner filed a writ of Review before the Supreme Court of Puerto Rico which requested the court to Review the order entered by the Superior Court on February 28, 1980. In this writ of review again Petitioner claimed his right to due process under the State Constitution before being deprived of his property.

On April 17, 1980 the Supreme Court of Puerto Rico denied the writ of Review filed by Petitioner.

On May, 1, 1980 the Petitioner filed a Motion for Reconsideration.

On May 15, 1980 the Supreme Court of Puerto Rico denied the Motion for Reconsideration.

On June 3, 1980 Petitioner filed a Motion for Reconsideration on the grounds that the application of the State Court of the Code of Civil Procedures 32 LPRA 3561-3566 violated Petitioner's right to due process of law under the United States Constitution. That Petitioner was denied a hearing before being ordered to vacate the land and he had a right to compensation.

Petitioner never was granted a hearing in which his right to compensation for the improvements he made in the land was determined. This constitutes a violation of Petitioner's right to due process of law guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution, which prohibits the state from depriving a person of his property without due process of law. The State Court interpretation of 3561-3566 of the Code of Civil Procedure, 32 L.P.R.A. 3561-3566 violates the Fifth and Fourteenth Amendment of the United States Constitution inasmuch as it allows the taking of property without due process of law. Also it constitutes an unjust enrichment for Respondent.

The disregard by the Supreme Court of Puerto Rico of the due process of law guaranteed to Petitioner by the United States Constitution and the patently erroneous interpretation of the Puerto Rican statute by the Supreme Court of Puerto Rico make it

necessary for this Court to reverse and remand with orders that a hearing be held were Petitioner's right to due process be guaranteed.

VI. ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

As previously cited in this Petition the appellate jurisdiction of this Court is invoked under 28 USC, Section 1258 relative to reviews of judgments from the Supreme Court of Puerto Rico.

For the consideration of writs of Certiorari, the requirements set forth for the jurisdiction of this Court in 28 USC. Section 1257 are the same than for Section 1258, therefore, case law for Section 1257 squarely applies to Section 1258.

Petitioner claims that a right not to be deprived of his property without the due process of law guaranteed by the Fifth and/or the Fourteenth Amendment to the Federal Constitution. This claim by Petitioner is accompanied by a second claim whereby Petitioner alleges that a state statute, to wit Puerto Rico Possessory Injunction statute 32 L.P.R.A., Section 3561-3566, as applied in this case, is unconstitutional as it deprives Petitioner of his property without a hearing, thereby, said Injunction statute being repugnant to the Constitution of the United States. This second claim falls also under the situation where this Court has jurisdiction, by writ of Certiorari, to review a judgement of a state court.

A statute of Puerto Rico was held to be a "State Statute" for purposes of appeal jurisdiction in *Calero*

Toledo vs. *Pearson Yacht Leasing Co*, 416 U.S. 663 and *Examining Board of Engineers* vs. *Flores de Otero*, 426 U.S. 572. This case involves a Puerto Rican statute.

The jurisdiction in this case is averred in Petitioner's claim that a state statute offends federal law and, thus, that a right under federal law has been rejected.

Jurisdiction lies in the Supreme Court even though the state Court is not explicit in overuling a timely challenge on federal grounds to the validity of a state statute. See, *Sargent* vs. *Texas*, 318 US 418. Certiorari under Section 1257 (3) is the only proper method of seeking review of whatever federal issues when a state court refuses to reach a challenge to the validity of a state statute. See *Garrity* vs. *New Jersey* 385 US 493. Such is the situation previously described, in the case at bar.

It is also essential to the jurisdiction of the Supreme Court under Section 1257 and 1258 that a substantial federal question not devoid of merit has been properly raised. Nor can it be so explicitly foreclosed by prior decisions as to leave no room for real controversy.

In the present action a federal substantial claim has been raised, deprivation of property without due process, it is not devoid of merit as it encompasses the deprivation of the sole property of Petitioner and his whole lives savings and is an issue which this Court specifically has never addressed itself to.

Lastly a concise discussion of the "drawn in question" requirement proceeds.

The doctrine is that the "drawn in question" requirement of Section 1257 is met where the validity of the statute is "drawn in question in a manner directly bearing on the merit of the action". See, *Cox Broadcasting Corp.* vs. *Cohn*, 420 U.S. 469. Petitioner has met with this requirement while discussing the questions presented to this Court for review.

This Court has also invoked its review power over state courts determinations on the basis of a "plain error", of federal constitutional proportions, that was not raised or decided below. See, *Vachon* v. *New Hampshire*, 414 US 478 and *Thomson* v. *City of Louisville*, 362 US 199 and specifically *Monagas* v. *Vidal*, 170 Fed. 2d. 99 where the Court of Appeals acting as a reviewing Court of the Supreme Court of Puerto Rico, said:

> "...the narrow question for us under the historic rule reaffirmed and restated by the Supreme Court of the United States in *De Castro* vs. *Board of Commissioner*, (322 US 451) is whether the decisions of the Supreme Court of Puerto Rico... (are) "inescapably wrong" or "patently erroneus or plainly inconsistent with established principles of the local law". See also, *Bonet* vs. *Texas*, 84 L Eds. 401.

No more but definitely no less is Petitioners request from this Supreme Court today: a finding that the Supreme Court of Puerto Rico decided wrongly this case and that its decision is plainly inconsistent with sections 1167, 1164, 1468, 1469, 1425 and 1470 of the Puerto Rican Civil Code, 31 L.P.R.A. 1167, 1164, 1468, 1469, 1425, and 1470, in addition to being repugnant to the due process clause of the Fifth

and/or Fourteenth Amendment to the Federal Constitution.

For the reasons stated therein, the Petitioner Respectfully moves the Court to review by Writ of Certiorari the order and decree of the State Court.

Respectfully Submitted.

María Dolores Fernos, *Esquire*
Georgina Candal, *Esquire*
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APENDICE I

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974

SOBRE: ACCION CIVIL
(Injunction Posesorio)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADOS

SENTENCIA

A la vista del presente caso señalado en rebeldía para el día 18 de marzo de 1977, compareció la demandante, EPIFANIA PEREZ GUZMAN, con su abogado el Lcdo. Antonio Cajigas Llamas.

De los autos se desprende que los demandados fueron debidamente emplazados, no contestaron la Demanda y tampoco comparecieron a la vista del presente caso.

Oída la prueba testifical ofrecida por la demandante el Tribunal encuentra probadas las alegaciones de la Demanda y en su consecuencia dicta la siguiente:

SENTENCIA

Se ordena a los demandados, BASILIO VEGA VEGA y LUIS SANTIAGO ORTEGA que dentro del término de veinte (20) días de notificársele esta

Sentencia, desalojen la propiedad de la demandante, EPIFANIA PEREZ GUZMAN y se abstengan de cometer actos de dominio en dicha propiedad bajo apercibimiento de desacato al Tribunal y además se condena a cada uno de los demandados, a pagar la suma de $250.00 en concepto de honorarios de abogado la cual deberán consignar en la Secretaría del Tribunal a nombre del Lcdo. Antonio Cajigas Llamas dentro del término de veinte (20) días de notificársele esta Sentencia.

DADA en Bayamón, Puerto Rico, a 3 de agosto de 1977.

REGISTRESE Y NOTIFIQUESE.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

APENDICE II

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974 (504)
SOBRE: ACCION CIVIL
(Injunction Posesorio)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADOS

ORDEN DE LANZAMIENTO

Vista la Moción de la Parte Demandante en el caso del epígrafe en la cual solicita el lanzamiento de los demandados Luis Santiago Ortega y Basilio Vega Vega y sus familiares, empleados y/o cualesquiera persona o personas que ocupen la propiedad objeto de la Demanda del epígrafe; examinados los autos de este caso y la Ley aplicable, el Tribunal declara CON LUGAR la referida Moción y en su consecuencia ordena el lanzamiento de los demandados Luis Santiago Ortega y Basilio Vega Vega y sus familiares, empleados y/o cualesquiera persona o personas que ocupen la propiedad siguiente:

> "Parcela de terreno con una cabida superficial de QUINIENTOS METROS (500) CUADRADOS, localizada en Villa Isleña en la Carretera Estatal Número Ochocientos Treinta y Cinco (835) del Barrio Guaraguao del término municipal de

Guaynabo, Puerto Rico, en lindes por el NORTE en una distancia de Treinta y dos puntos sesentidos (32.62) metros con la Carretera o camino vecinal pavimentada; por el SUR en una distancia de Nueve punto Cuarenticinco (9.45) metros con la Familia Alvarado Colón; por el ESTE en una distancia de Veintisiete punto Trece (27.13) metros con Angel F. Candelaria y por el OESTE en una distancia de Ocho punto Veintitres (8.23) metros con un camino vecinal pavimentado. En esta parcela hay construídas unas estructuras de madera techadas de zinc dedicadas a uso residencial."

Esta orden quedará sin efecto en el caso de que la parte demandada haya desalojado la propiedad objeto de la demanda y haya pagado las costas y gastos de este procedimiento así como los honorarios de abogado que fijó el Tribunal.

DADA en Bayamón, Puerto Rico, a 27 de marzo de 1978.

REGISTRESE Y NOTIFIQUESE.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

APENDICE III

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974
SOBRE: ACCION CIVIL
(Injunction Posesorio)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADOS

MANDAMIENTO AL ALGUACIL
PARA QUE CUMPLIMENTE
ORDEN DE LANZAMIENTO

AL SR. ALGUACIL DEL TRIBUNAL:

Con fecha de enero de 1978, este Honorable Tribunal ha dictado la Orden que a continuación se transcribe:

"Vista la Moción de la Parte Demandante en el caso del epígrafe en la cual solicita el lanzamiento de los demandados Basilio Vega Vega y Luis Santiago Ortega, sus familiares, empleados y/o personas que ocupen la propiedad mencionada en la Demanda del epígrafe; examinados los autos del caso y la Ley aplicable, el Tribunal declara CON LUGAR la referida Moción y en su consecuencia ordena el lanzamiento de los demandados Basilio Vega Vega y Luis Santiago Ortega, sus familiares, empleados y/o persona o personas que ocupen la propiedad siguiente:

"Parcela de terreno con una cabida superficial de QUINIENTOS METROS (500) CUADRADOS, localizada en Villa Isleña en la Carretera Estatal Número Ochocientos Treinta y Cinco (835) del Barrio Guaraguao del término municipal de Guaynabo, Puerto Rico, en lindes por el NORTE en una distancia de Treinta y dos puntos sesentidos (32.62) metros con la Carretera o camino vecinal pavimentada; por el SUR en una distancia de Nueve punto Cuarenticinco (9.45) metros con la Familia Alvarado Colón; por el ESTE en una distancia de Veintisiete punto Trece (27.13) metros con Angel F. Candelaria y por el OESTE en una distancia de Ocho punto Veintitres (8.23) metros con un camino vecinal pavimentado. En esta parcela hay construídas unas estructuras de madera techadas de zinc dedicadas a uso residencial."

Esta orden quedará sin efecto en el caso de que la parte demandada, sus familiares, empleados o persona o personas que ocupaban la propiedad objeto de la demanda hayan desalojado la misma y hayan pagado los costos y gastos de este procedimiento más los honorarios de abogado que fijó el Tribunal.

DADA en Bayamón, Puerto Rico a 27 de marzo de 1978.

REGISTRESE Y NOTIQUESE.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

POR TANTO, Usted, Sr. Alguacil, de este Tribunal, es requerido por la presente para que dé fiel cumplimiento a la orden antes descrita y proceda

con el correspondiente lanzamiento en el caso del epígrafe.

DADA en Bayamón, Puerto Rico, a 5 de abril de 1978.

REGISTRESE Y NOTIQUESE.

MARIA MORALES DE POU
SECRETARIA

APENDICE IV

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: CS 76-2974
SOBRE: ACCION CIVIL
(Inj. Pos.)

EPIFANIA PEREZ GUZMAN,
DEMANDANTE

VS.

BASILIO VEGA VEGA Y OTRO,
DEMANDADOS

RESOLUCION

En este caso ambas partes son invasores confesos de propiedad ajena. La parte demandante acudió al Tribunal mediante el recurso de injunction posesorio para que se ordenara a los demandados a desalojar el terreno que alegadamente invadieron a quien antes lo habían también invadido. Emitimos sentencia protegiendo la posesión de la demandante. Comparecieron más tarde los demandados pidiendo que dejásemos sin efecto la sentencia en base a que no fueran emplazados debidamente y a que uno de los demandados no fue debidamente traído al pleito. Señalamos el incidente para vista en la cual se adujo abundante prueba testifical.

Para la fecha de la vista uno de los demandados, Basilio Vega Vega, ya no ocupaba el terreno en controversia. En cuanto al otro demandado revela la prueba ante el Tribunal que se le conoce como Luis y

como Wiso y fue uno de los que invadió y construyó una casucha en el sitio objeto de la demanda. Comparece ahora en el presente incidente alegando ser Luis Santiago Ortega. No puede negar, sin embargo, que es la misma persona demandada bajo el nombre de Luis Santiago Ortega, conocido por Guiso.

Nos mereció completo crédito el testigo Javier Fragoso, quien dijo llevar 25 años en labores relacionadas con el emplazamiento de personas y otras funciones en los Registros de Propiedad. Aseveró que emplazó debidamente a los dos demandados. Detalló su viaje a los terrenos de la invasión y la forma en que entregó las notificaciones. Las demás circunstancias de la prueba nos convencen aún más de que efectivamente se cumplió con la Ley en el emplazamiento de los demandados y de que no tienen razón en sus presentes alegaciones.

Se deja en todo su efecto y vigor la sentencia y se deniega la moción para dejar sin efecto lo actuado.

Regístrese y Notifíquese.

DADA en Bayamón, Puerto Rico, hoy día 20 de febrero de 1979.

JOSE F. RODRIGUEZ RIVERA
JUEZ SUPERIOR

APENDICE V

EN EL TRIBUNAL SUPERIOR DE PUERTO RICO
SALA DE BAYAMON

CIVIL NUM.: 76-2974 (505)
SOBRE: Injunction Posesorio

EPIFANIA PEREZ,
DEMANDANTE

VS.

BASILIO VEGA Y
LUIS SANTIAGO ORTEGA
C/P GUISO,
DEMANDADOS

RESOLUCION

Para mayor claridad del incidente que nos toca resolver en el presente caso se hace necesario una relación del peregrinaje judicial de éste. Veámos.

El 27 de octubre de 1976 radicó la demandante una acción de "Injunction Posesorio" contra los demandados, alegando que estos le invadieron la posesión del predio de terreno que en la demanda se describió. Es procedente señalar que la alegada ocupación de dicho predio por la parte demandante advino también mediante una invasión de terrenos, por lo que nos encontramos frente a una alegada invasión contra otro invasor.

Se emplazó a ambos demandados el 13 de noviembre de 1976. Por no haber comparecido al pleito a responder el 1 de diciembre de 1976. El 18 de marzo de 1977 se vió la vista en rebeldía y se dictó sentencia el 3

de agosto de 1977; copia de la notificación se archivó en autos el 26 de octubre de 1977.

El 27 de marzo de 1978 se expidió orden de lanzamiento para que se desalojara a los demandados de la propiedad. El 1 de septiembre de 1978, fecha para la cual aún no se había llevado a cabo el desalojo, y habiendo transcurrido casi un año de la notificación de la sentencia, radicaron los demandados un escrito que titularon "Moción para Dejar sin Efecto Moción (sic) y Otros Extremos", en la que se pide al Tribunal que deje sin efecto la sentencia al amparo de la Regla 49.2, aduciendo que el Tribunal no adquirió jurisdicción sobre las partes. No se adujo ningún otro argumento para que se dejara sin efecto la sentencia. Se acompañó la Moción con declaraciones de los demandados negando *bajo juramento* que conocieran del caso antes del trámite de desalojo. Luego de celebrarse una vista, en la que las partes aportaron pruebas sobre la contención de cada cual, mediante Resolución del 20 de febrero de 1979 el Tribunal resolvió que los demandados fueron válidamente emplazados por lo que dejó en efecto la sentencia. Nada hizo la parte demandada en torno a la Resolución del Tribunal hasta que se comienza a gestionar nuevamente el lanzamiento de los demandados, seis meses después de la fecha de dicha Resolución. Se solicitó entonces que no se expidiera nueva orden de lanzamiento, a lo que el Tribunal dispuso No Ha Lugar, mediante Orden del 13 de agosto de 1979. Se recurrió al Tribunal Supremo en Certiorari, y éste no expidió el auto. (Resolución del 18 de octubre de 1979).

El 4 de diciembre de 1979 vuelven los demandados a radicar otra "Moción de Relevo de Sentencia". Se aduce para ello una serie de fundamentos, entre ellos, que la demandante "cometió fraude al Tribunal al declarar falsamente que se encontraba en la posesión real del inmueble objeto de la controversia...". Es esta la Moción que está ahora para nosotros resolver.

Simultáneamente con la radicación de esta nueva solicitud de relevo de sentencia se pidió la inhibición en el caso del Hon. José P. Rodríguez Rivera. Mediante Resolución y Orden del 6 de diciembre de 1979, el referido juez dispuso que aunque "los fundamentos para la recusación son frívolos... como están formulados dentro de un espíritu de pequeña intriga..." se inhibía en el caso. Así llegó a nuestra atención.

El 11 de diciembre de 1979 los demandados radicaron ante el Tribunal Supremo un escrito que titularon "Apelación", con copia ante esta Sala del Tribunal Superior[1]. Se apeló aparentemente de una determinación inexistente, pues se hace referencia a una alegada sentencia o determinación en el caso, por el Hon. Juan José Ríos Martínez, que se aduce pone fin a la cuestión litigiosa, pero que ni se había dictado a aquella fecha ni se dictó luego. El 20 de diciembre de 1979 el Tribunal Supremo dispuso "no ha lugar" al escrito de apelación.

Señalamos una vista en torno a la Moción bajo la Regla 49.2 para el 18 de enero de 1980. En la misma limitamos el planteamiento al alegado fraude al Tribunal, por entender que carecíamos de jurisdicción

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[1] Se hizo contrario a lo preceptuado en la Regla 53.1 de Procedimiento Civil.

para considerar los demás fundamentos alegados en la Moción. En dicha vista ambas partes ofrecieron prueba en torno a sus sendas contenciones, quedando sometido el incidente, sujeto solo a un memorando de autoridades que se requirió que cada parte rindiera en o antes del 15 de febrero de 1980. Ambas partes lo radicaron fuera de término; el demandante lo hizo el 19 de febrero de 1980; el demandado el 25 de febrero de 1980.

Luego de la vista en la que ya el incidente había quedado sometido, la parte demandada solicitó la transcripción de unas vistas anteriores "para poder probar dicho fraude" de la parte demandante. Al pasar juicio sobre esta solicitud señalamos que el incidente había quedado sometido con la prueba presentada en la vista. Solicitó también la parte demandada mediante otro escrito, la reconsideración a la admisión en evidencia de algunos documentos, los que acompañó en su moción. Sin entrar a considerar la propiedad de tal solicitud en esa etapa de los procedimientos, que equivale prácticamente a una invitación a que abramos más las puertas al anarquismo procesal que ya parece haberse asomado en este caso, dispusimos No Ha Lugar a la misma.

Merece hacerse mención que en la vista del 18 de enero de 1980 se radicó por los abogados de la parte demandada, y fue declarada con lugar, una moción renunciando a la representación legal de Basilio Vega, luego de aclarar que la solicitud para la que señaló la vista se hacía solamente en nombre de otro demandado. Se estipuló que el Sr. Basilio Vega ya había abandonado la propiedad objeto del pleito.

La propia prueba de la parte demandada en la vista antes indicada no establece la existencia de fraude al Tribunal que alega dicha parte. Con el testimonio de uno de sus testigos, el Sr. Rafael López, quedó establecido que cuando llegó el demandado Wilfredo Santiago, que es el mismo demandado Luis A. Santiago (conocido por Guiso), a la propiedad, había en el solar una caseta de madera como de un cuarto, que se estableció era de la demandante. Tenía allí herramientas para construir en el solar y equipo de cocina. Además de la caseta había instalados los denominados "socos" para la edificación. El propio demandado expresó que llegó al solar en octubre de 1976 (mes en que se radicó originalmente el pleito); que la demandante enseguida lo llevó a la Corte de Distrito de Guaynabo. Allí el Juez Toro le indicó a la demandante que tenía que radicar "Injunction". Así lo hizo, y mientras tanto el demandado siguió construyendo allí, a sabiendas de que había una acción pendiente en el Tribunal, pues había sido debidamente emplazado.

La Regla 49.2 de Procedimiento Civil es un mecanismo para abrir camino a la justicia *(Sen. de Bravo González* v. *Secretario de Hacienda*, 106 D.P.R. 672). No es, sin embargo, un medio para conseguir que se extiendan términos de revisión de una Sentencia, que es en esencia lo que se pretende ahora en este caso (Veáse *Figueroa* v. *Banco de San Juan*, resuelto el 16 de mayo de 1979, 79 J.T.S.; 46 *González* v. *Chaves*, 103 D.P.R. 478; *Rodríguez* v. *Tribunal Superior*, 102 D.P.R. 290). El uso de este mecanismo procesal tiene unas limitaciones que impone la propia Regla.

Dispone la citada Regla, en la parte que ahora nos concierne que:

> "...Esta regla no limita el poder del tribunal para (a) conocer de un pleito independiente con el propósito de relevar a una parte de una sentencia, orden o procedimiento; (b) conceder un remedio a una parte que en realidad no hubiera sido emplazada; y (c) dejar sin efecto una sentencia por motivo de fraude al tribunal".

No tenemos ante nosotros la situación que contempla la parte (a) del párrafo transcrito. La situación cobijada en la parte (b) ya fue adjudicada al considerar el Tribunal la anterior Moción de Relevo de Sentencia. Ello dejaría disponible para este incidente únicamente lo cubierto bajo la letra (c), el llamado fraude al Tribunal.

En estos casos no impera la limitación del término de seis meses *(G.A.C. Finance Corp.* v. *Rodríguez,* 102 D.P.R. 213; *Municipio de Coamo* v. *Tribunal Superior,* 99 D.P.R. 932).

El demandado pretende sostener el alegado fraude amparándose en que la demandante no trajo la verdad a la consideración del Tribunal en la vista del caso. Para ello trae a nuestra atención unos testimonios que no merecen crédito alguno, en torno a las expresiones falsas de la demandante. Lo único que queda en claro de la prueba es que el demandado, quien por su negligente desatención al ser emplazado y por su claro menosprecio se indiferencia al trámite judicial, se ve en las puertas del desalojo, trata ahora de buscar el refugio del Tribunal, al que desatendió al seguir construyendo con mediada mala fe. Se olvida que en la realización de

la justicia no se puede santificar maniobras como la llevada a cabo por él *(Soriano Tavárez* v. *Rivera Anaya,* resuelto el 30 de abril de 1979, 79 J.T.S. 42*)*.

Confunde el demandado (en su memorando de autoridades) el concepto de domicilio con el de posesión. Pretende asirse, además, al argumento de la equidad y reclamar, por primera vez en esta etapa, el derecho a que se le compense por lo edificado, amparándose en disposiciones de ley que gobiernan el derecho de accesión. Aunque la mala fe en el caso ha quedado claramente señalada, tampoco tiene el demandado a su favor estos argumentos en una Moción de relevo de sentencia.

Aduce también el demandado que su desalojo constituiría una privación de su propiedad sin el debido proceso de ley. Aunque también ha sido traída tardíamente esta defensa, su frivolidad es manifiesta. A él se le dio oportunidad de traer al Tribunal todas las defensas que creyera tener disponible a su favor. Prefirió la desatención. No puede ahora lamentarse. "Resulta rídiculo que personas que invaden ilegalmente y sin derecho alguno inmuebles ajenos planteen como error... que se les privó del disfrute de su propiedad..." *(Catalán González* v. *García,* 104 D.P.R. 380, 386*)*.

Sobre lo que constituye fraude al Tribunal, que es lo único que nos toca aquí resolver, merece destacarse lo que se dijo en *Municipio de Coamo,* supra (p. 939)

> "La Regla 49.2 contempla dos clases de fraude. Los distingue estableciendo que en el caso de fraude entre partes la moción de relevo debe ser presentada dentro del término de seis meses. En los casos de fraude al tribunal puede éste dejar sin

efecto la sentencia sin limitación de tiempo alguno. La distinción entre los dos tipos de fraude la hace Moore de la siguiente forma: 'Fraude al tribunal, creemos, debe cubrir sólo aquellos tipos de fraude cuyo efecto o cuya intención es mancillar al tribunal como tal, o que es fraude perpetrado por oficiales del tribunal, de tal forma que la maquinaria judicial no pueda ejercer como de costumbre su imparcial labor de juzgar los casos que se le presentan para adjudicación. Fraude inter partes, sin más, no ha de considerarse fraude al tribunal, sino que el remedio se dejará para una moción presentada bajo la Regla 60 (b) (3) o a acción independiente".

Nuestra jurisprudencia ha reconocido que constituye fraude al tribunal 'la preparación, el uso y la presentación en la vista del caso de prueba falsa obtenida por la parte adversa por medio del soborno y la instigación al perjurio...' "

Nada hay en el presente caso que permita concluir que la demandante incurrió en fraude al Tribunal.

Se declara sin lugar la Moción de Relevo de Sentencia.

NOTIFIQUESE.

Dada en Bayamón, Puerto Rico, a 28 de febrero de 1980.

ENRIQUE RIVERA SANTANA
JUEZ SUPERIOR

APENDICE VI

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL GENERAL DE JUSTICIA
TRIBUNAL SUPERIOR
SALA DE BAYAMON

CIVIL NUM.: 76-2974 (505)
SOBRE: Injunction Posesorio

EPIFANIA PEREZ

VS.

BASILIO VEGA Y LUIS SANTIAGO ORTEGA
C/P GUISO

NOTIFICACION

Lic. Georgina Candal

Apartado 727, Guaynabo, Puerto Rico 00657
Ljc. Antonio Cajigas Llanos,
Rodríguez Oquendo Esq. 2B-#142,
Urb. Severo Quiñones, Carolina, Puerto Rico 00630

Señores:

Notifico a ustedes que en relación con ** Moción de Reconsideración** radicada por el demandado Wilfredo Santiago el Hon. Juez dictó la Orden que se transcribe a continuación, la cual ha sido archivada en autos en el día de hoy:
Orden: "No Ha Lugar".

ENRIQUE RIVERA SANTANA
JUEZ SUPERIOR

Bayamón, Puerto Rico, a 12 de marzo de 1980.

ROSA M. CARRILLO
SECRETARIA

CERTIFICO: Que envié por correo de esta notificación a las partes arriba mencionadas a sus direcciones indicadas en la misma, hoy 13 de marzo de 1980, habiendo archivado en los autos copia de esta notificación en 13 de marzo de 1980.

Bayamón, Puerto Rico, a 13 de marzo de 1980.

NELLY CRUZ CORE
SECRETARIA AUXILIAR

APENDICE VII

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

NUM. 0-79-455

CERTIORARI

EPIFANIA PEREZ,
DEMANDANTE Y RECURRIDA

V.

BASILIO VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADO Y PETICIONARIO

RESOLUCION

San Juan, Puerto Rico, a 18 de octubre de 1979.

A la anterior solicitud de certiorari, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. Los Jueces Asociados señores Rigau y Negrón García no intervinieron.

ERNESTO L. CHIESA
SECRETARIO

APENDICE VIII
EN EL TRIBUNAL SUPREMO DE PUERTO RICO
NUM.: R-80-131

REVISION

EPIFANIA PEREZ GUZMAN,
DEMANDANTE Y RECURRIDA

V.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADO Y RECURRENTE

RESOLUCION

San Juan, Puerto Rico, a 15 de mayo de 1980.

A la anterior moción de reconsideración, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. El Juez Presidente señor Trías Monge y el Juez Asociado señor Rigau no intervinieron.

ERNESTO L. CHIESA
SECRETARIO

APENDICE IX

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

NUM. R-80-131

REVISION

EPIFANIA PEREZ GUZMAN,
DEMANDANTE Y RECURRIDA

V.

BASILIO VEGA VEGA Y
LUIS SANTIAGO ORTEGA,
DEMANDADO Y RECURRENTE

Moción solicitando Traducción y Certificación de las opiniones y órdenes emitidas en presente caso

AL HONORABLE TRIBUNAL:

Comparece el recurrente por conducto de los abogados que suscriben y muy respetuosamente expone, alega y solicita:

PRIMERO: Que en el presente caso la parte recurrente está preparando un recurso de certiorari para ante el Tribunal Supremo de Estados Unidos.

SEGUNDO: Que la regla 23 (J) del reglamento del Tribunal Supremo de Estados Unidos requiere que se someta el recurso de Certiorari con copia de las ordenes y opiniones emitidas en el caso por el Tribunal del estado.

La Regla 37 del Reglamento del Tribunal Supremo de Estados Unidos requiere que cuando un record que se tramita al Tribunal Supremo conste en lenguaje extranjero este, esté traducido bajo la autoridad de la Corte inferior.

TERCERO: Que la parte recurrente precisa que para cumplir con las antes citadas reglas este Honorable Tribunal provea una traducción oficial de las siguientes opiniones en este caso.

1. Sentencia emitida por el Tribunal Superior de Bayamón el 3 de agosto de 1977.
2. Orden de Lanzamiento emitida por el Tribunal Superior de Bayamón el 27 de marzo de 1978.
3. Mandamiento emitido por el Tribunal Superior de Bayamón el 5 de abril de 1978.
4. Resolución emitida por el Tribunal Superior de Bayamón el 20 de febrero de 1979.
5. Resolución declarando no ha lugar al Certiorari emitido por el Tribunal Supremo de Puerto Rico el 18 de octubre de 1979.
6. Resolución emitida por el Tribunal Superior el 28 de Febrero de 1980.
7. Orden declarando no ha lugar a la Moción de Reconsideración del Tribunal Superior de Bayamón del día 12 de marzo de 1980.
8. Orden declarando no ha lugar a la petición de Revisión emitida por el Tribunal Supremo de Puerto Rico el día 17 de abril de 1980.
9. Orden declarando no ha lugar a la Moción de Reconsideración emitida por el Tribunal Supremo de Puerto Rico el día 15 de mayo de 1980.

Por todo lo cual, la parte recurrente solicita muy respetuosamente de este Honorable Tribunal que a tenor con las reglas 23 y 37 del Tribunal Supremo de Estados Unidos se sirva ordenar y suministrar la traducción de las órdenes y resoluciones antes enumeradas.

CERTIFICACION

Certifico que he enviado copia fiel y exacta de la presente moción al Lcdo. Cajigas Llamas en su dirección calle 2-B No. 142, Urb. Severo Quiñonez, Carolina, P.R.

En San Juan, Puerto Rico a 6 de junio de 1980.

GEORGINA CANDAL
FRANCISCA SANTIAGO NEGRON
Servicios Legales de Puerto Rico
Apartado 727
Guaynabo, Puerto Rico

Supreme Court, U. S.
FILED
AUG 4 1980
MICHAEL RODAK, JR., CLERK

80-81

In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
PETITIONER

vs.

EPIFANIA PEREZ
RESPONDENT

DOCKET NUMBER:
ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF PUERTO RICO

COUNSEL FOR PETITIONER
MARIA DOLORES FERNOS
GEORGINA CANDAL
P.O. BOX "CM"
Río Piedras, Puerto Rico

COUNSEL FOR RESPONDENT
ANTONIO CAJIGAS LLAMAS
STREET 2-B No. 142
URB. SEVERO QUIÑONES
CAROLINA, PUERTO RICO.

In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
Petitioner

vs.

EPIFANIA PEREZ
Respondent

DOCKET NUMBER:
on writ of Certiorari from the Supreme Court of Puerto Rico

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Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Judgment in Civil Case No. 76-2974 on Civil Action rendered by the Superior Court of Puerto Rico, Bayamón Part, on August 3, 1977.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 11th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

TRADUCCION ESPAÑOL CASO WILFREDO SANTIAGO ORTEGA VS. EPIFANIA PEREZ.

APPENDIX I

TRANSLATION FROM SPANISH

IN THE SUPERIOR COURT OF PUERTO RICO
BAYAMON PART

CIVIL NO.: 76-2974

ON: CIVIL ACTION
(Possessory Injunction)

EPIFANIA PEREZ GUZMAN,
PLAINTIFF

V.

BASILIO VEGA VEGA AND
LUIS SANTIAGO ORTEGA,
DEFENDANTS

JUDGMENT

At the hearing of this case by default set for March 18, 1977, the plaintiff herein, EPIFANIA PEREZ GUZMAN, appeared personally and by her counsel, Antonio Cajigas Llamas, Esq.

From the records it appears that the defendants were duly summoned, did not answer the complaint, nor did they attend the hearing of this case.

After having heard the oral proof offered by the plaintiff, the Court considers as proved the claims of the complaint, and as a consequence thereof, hereby renders the following:

JUDGMENT

The defendants BASILIO VEGA VEGA and LUIS SANTIAGO ORTEGA are hereby ordered, within a period of twenty (20) days after being notified of this judgment, to vacate the property of the plaintiff EPIFANIA PEREZ GUZMAN, and to abstain from commiting acts of domain on said property, under penalty of contempt of Court, and each of the defendants is furthermore sentenced to pay the sum of $250.00 for attorneys' fees, which sum they shall deposit in the Office of the Court Clerk in the name of Atty. Antonio Cajigas Llamas, within the term of twenty (20) days after being notified of this Judgment.

GIVEN at Bayamón, Puerto Rico, this the 3rd day of August, 1977.

BE IT REGISTERED AND NOTIFIED.

(Sgd.) JOSE F. RODRIGUEZ RIVERA
SUPERIOR JUDGE

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of an Eviction Order in Civil Case No. 76-2974 (504) on Civil Action, issued by the Superior Court of Puerto Rico, Bayamón Part, on March 27, 1978.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX II

TRANSLATION FROM SPANISH

IN THE SUPERIOR COURT OF PUERTO RICO
BAYAMON PART

CIVIL NO. 76-2974 (505)

ON: CIVIL ACTION
(Possessory Injunction)

EPIFANIA PEREZ GUZMAN,
PLAINTIFF

V.

BASILIO VEGA VEGA AND
LUIS SANTIAGO ORTEGA,
DEFENDANTS

EVICTION ORDER

Having seen the Plaintiff's motion in the above-captioned case, wherein she requests the eviction of the defendants Luis Santiago Ortega and Basilio Vega Vega and their relatives, employees, and/or any person or persons occupying the property which is the object of the aforesaid Complaint; after examining the records of this case and the applicable Law, the Court hereby ACCEPTS said Motion, and as a consequence thereof, hereby orders the eviction of the the defendants Luis Santiago Ortega and Basilio Vega Vega and

their relatives, employees, and/or any person or persons occupying the following property:

> "Parcel of land with a superficial area of FIVE HUNDRED (500) SQUARE METERS, located in Villa Isleña on State Road Number Eight Hundred Thirty-five (835), in Guaraguao Ward of the municipality of Guaynabo, Puerto Rico, bounded on the NORTH, in a distance of thirty-two point sixty-two (32.62) meters, with the paved road or neighborhood path; on the SOUTH, in a distance of nine point forty-five (9.45) meters, with the Alvarado Colón family; on the EAST, in a distance of twenty-seven point thirteen (27.13) meters, with Angel F. Candelaria; and on the WEST, in a distance of eight point twenty-three (8.23) meters, with a paved neighborhood path.
>
> In this lot there are constructed some zinc-roofed wooden structures devoted to residential use."

This order shall remain without effect in the event that the defendant has vacated the property which is the object of the complaint, has paid the costs and expenses of this proceeding as well as the attorneys' fees set by the Court.

GIVEN at Bayamón, Puerto Rico, this the 27th day of March, 1978.

BE IT REGISTERED AND NOTIFIED.

(Sgd.) JOSE F. RODRIGUEZ
SUPERIOR JUDGE

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Writ to the Marshal to Execute Eviction Order, issued by the Superior Court of Puerto Rico, Bayamón Part, on March 27, 1978.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX III

TRANSLATION FROM SPANISH

IN THE SUPERIOR COURT OF PUERTO RICO
BAYAMON PART

CIVIL NO.: 76-2974

ON: CIVIL ACTION
(Possessory Injunction)

EPIFANIA PEREZ GUZMAN,
PLAINTIFF

V.

BASILIO VEGA VEGA AND
LUIS SANTIAGO ORTEGA,
DEFENDANTS

WRIT TO THE MARSHALL TO EXECUTE EVICTION ORDER

TO THE COURT MARSHALL:

On the date of January _____, 1978, this Court issued the following Order:

> "Having seen the Plaintiff's motion in the above-captioned case wherein she requests the eviction of the defendants Luis Santiago Ortega and Basilio Vega Vega and their relatives, employees, and/or any person or persons occupying the property which is the object of the aforesaid Complaint; after examining the records of this case and the applicable Law, the Court hereby

ACCEPTS said Motion, and as a consequence thereof, hereby orders the eviction of the defendants Luis Santiago Ortega and Basilio Vega Vega and their relatives, employees, and/or any person or persons occupying the following property:

"Parcel of land with a superficial area of FIVE HUNDRED (500) SQUARE METERS, located in Villa Isleña on State Road Number Eight Hundred Thirty-five (835), in Guaraguao Ward of the municipality of Guaynabo, Puerto Rico, bounded on the NORTH, in a distance of thirty-two point sixty-two (32.62) meters, with the paved road or neighborhood path; on the SOUTH, in a distance of nine point forty-five (9.45) meters, with the Alvarado Colón family; on the EAST, in a distance of twenty-seven point thirteen (27.13) meters, with Angel F. Candelaria, and on the WEST, in a distance of eight point twenty-three (8.23) meters, with a paved neighborhood path.

In this lot there are constructed some zinc-roofed wooden structures devoted to residential use."

This order shall remain without effect in the event that the defendant and relatives, employees thereof, or any person or persons occupying the property which is the object of the complaint, have vacated the same and have paid the costs and expenses of this proceeding as well as the attorneys' fees set by the Court.

GIVEN at Bayamón, Puerto Rico, this the 27th day of March, 1978.

BE IT REGISTERED AND NOTIFIED.

(Sgd.) JOSE F. RODRIGUEZ RIVERA
SUPERIOR JUDGE

(OFFICIAL SEAL)

WHEREFORE, Mr. Marshall, you are hereby required to comply faithfully with the aforesaid Writ and to proceed with the corresponding eviction in the above-captioned case.

GIVEN at Bayamón, Puerto Rico, this the 5th day of April, 1978.

BE IT REGISTERED AND NOTIFIED.

(Sgd.) MARIA MORALES DE POU
CLERK

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Decision in Civil Case No. CS 76-2974 on Civil Action (Possessory Injunction), issued by the Superior Court of Puerto Rico, Bayamón Part, on February 20, 1979.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX IV

TRANSLATION FROM SPANISH

IN THE SUPERIOR COURT OF PUERTO RICO
BAYAMON PART

CIVIL NO. CS 76-2974

ON: CIVIL ACTION
(Possessory Injunction)

EPIFANIA PEREZ GUZMAN,
PLAINTIFF

V.

BASILIO VEGA VEGA AND ANOTHER,
DEFENDANTS

DECISION

In this case both parties are confessed trespassers of another's property. The plaintiff came before the Court through the remedy of possesory injunction, seeking that the Court order the defendants to vacate the land they had allegedly invaded, and which in turn she had also previously invaded. We rendered judgment protecting the plaintiff's possession. The defendants appeared later requesting that we set aside the judgment on the basis that they were not duly summoned and that one of the defendants had not been duly brought into the action. We set a date for a hear-

ing on the case, whereat abundant oral proof was presented.

On the date of the hearing one of the defendants, Basilio Vega, no longer occupied the land under dispute. As regards the other defendant, the evidence before the Court reveals that he is known as Luis and as Wiso, and he was one of those who invaded and constructed a shack in the place which is the object of the complaint. He appears now in this incident claiming to be Luis Santiago Ortega. He cannot deny, however, that he is the same defendant under the name of Luis Santiago Ortega, known as Guiso.

Worthy of our full credence was the witness Javier Fragoso, who said that for 25 years he has been involved in work related to summoning persons and other tasks in the Property Registries. He stated that he duly summoned the two defendants. He described in detail his trip to the land invaded and the manner whereby the notices were delivered. The other circumstances of the evidence convince us even more that the law was in fact duly complied with in the summoning of the defendants, and that they are not right in their present claims.

The judgment is hereby left in all its effect and force and the motion to set aside what has been enacted is hereby denied.

Be it Registered and Notified.

GIVEN at Bayamón, Puerto Rico, this the 20th day of February, 1979.

(Sgd.) JOSE RODRIGUEZ RIVERA
SUPERIOR JUDGE

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Decision in Civil Case No. 76-2974 (505) on Possessory Injunction, issued by the Superior Court of Puerto Rico, Bayamón Part, on February 28, 1980.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX V

TRANSLATION FROM SPANISH

IN THE SUPERIOR COURT OF PUERTO RICO
BAYAMON PART

CIVIL NO.: 76-2974 (505)

ON: POSSESSORY INJUNCTION

EPIFANIA PEREZ GUZMAN,
PLAINTIFF

V.

BASILIO VEGA VEGA AND
LUIS SANTIAGO ORTEGA,
DEFENDANTS

DECISION

In order to better clarify the action whereupon we must decide in this case, it is necessary to describe its judicial pilgrimage. Let us see.

On October 27, 1976, the plaintiff filed against the defendants an action of "Possessory Injunction," claiming that the latter invaded her possession of the parcel of land described in the complaint. It is proper to set forth that the alleged occupation of said property by the plaintiff came about also through an invasion of the land, so that we are faced with an alleged invasion against another invader.

Both defendants were summoned on November 13, 1976. For not having appeared at the proceedings to

answer the claims of the complaint, their default was entered on December 1, 1976. On March 18, 1977, the hearing was held by default, and judgment was rendered on August 3, 1977; a copy of the notice was filed in the record of the case on October 26, 1977.

On March 27, 1978, an order was issued to evict the defendants from the property. On September 1, 1978, on which date the eviction had not yet been carried out, and almost a year having elapsed from the notice of judgment, the defendants filed a writ entitled "Motion to set aside Motion (sic) and other extremes", wherein the Court is requested to set aside the judgment under Rule 49.2, alleging that the Court did not acquire jurisdiction over the parties. No other argument was claimed for setting aside the judgment. The Motion was accompanied with statements from the defendants denying *under oath* that they knew about the case before the eviction proceeding. After a hearing, whereat the parties presented evidence on each one's contention, through the Decision of February 20, 1979, the Court resolved that the defendants were validly summoned, for which reason the judgment was left in effect. The defendant did nothing as regards the Court's Decision until the defendants' eviction proceeding is begun again six months after the date of said Decision. It was then requested that a new eviction order not be issued, which the Court dismissed through the Order.of August 13, 1979. An appeal was made to the Supreme Court for a Writ of Certiorari, but it did not issue the same (Decision of October 18, 1979).

On December 4, 1979, the defendants again filed another "Motion for Relief from Judgment." A series of reasons are adduced therefor, among them, "that the plaintiff deceived the Court by falsely stating that she was in true possession of the real estate the object of the controversy..." This is the Motion now before us for decision.

Concurrently with the filing of this new request of relief from judgment, the Hon. José F. Rodríguez Rivera was requested to disqualify himself in this case. By Decision and Order of December 6, 1979, said judge provided that although "the grounds for the challenge are frivolous... as they are formulated within a spirit of petty intrigue..." He was disqualifying himself in the case. It came thus to our attention.

On December 11, 1979, the defendants filed before the Supreme Court a writ which they titled "Appeal" with copy thereof to this Superior Court Part.[1] The appeal was apparently from an inexistent determination, since reference is made to an alleged judgment or determination in the case by the Hon. Juan José Ríos Martínez, which it is adduced puts an end to the matter in issue, but which had not been rendered on that date nor thereafter. On December 20, 1979, the Supreme Court dismissed the writ of Appeal.

Under Rule 49.2, we set a hearing on the Motion for January 18, 1980. Thereat we limited the presentation of the alleged fraud upon the Court, as we understood that we lacked jurisdiction to consider the other claims of the Motion. At said hearing both parties presented evidence regarding their respective conten-

[1] It was done contrary to what is prescribed in Rule 53.1 of Civil Procedure.

tions, the case having remained submitted, subject only to a memorandum of authorities which was required to be filed by each party on or before February 15, 1980. Both parties filed it outside the term; the plaintiff did so on February 19, 1980; the defendant did so on February 25, 1980.

After the hearing whereat the case already remained submitted, the defendant requested the transcripts of some previous hearings "in order to be able to prove said fraud" on the part of plaintiff. On passing judgment on this request, we pointed out that the case had remained submitted with the evidence presented at the hearing. Through another brief the defendant also requested the Reconsideration of the acceptance as evidence of some documents which defendant accompanied with his motion. Without beginning to consider the propriety of such a request at that stage of the proceedings, which is practically equivalent to an invitation for us to open the doors wider to the procedural anarchy which already seems to have appeared in this case, we rendered the same Dismissed.

It must be set forth that at the hearing of January 18, 1980, counsel for defendant filed, and it was accepted, a Motion waiving the legal representation of Basilio Vega, after making clear that the request for which the hearing had been set was made only in name of the other defendant. It was stipulated that Mr. Basilio Vega had already abandoned the property which was the object of the complaint.

The evidence itself of the defendant at the aforementioned hearing does not establish the existence of

fraud upon the Court which said party claims. With the testimony of one of his witnesses, Mr. Rafael López, it was established that when the defendant Wilfredo Santiago, who is the same defendant Luis A. Santiago (known as Guiso), arrived at the property there was on the lot a wooden hut about as big as a room, which it was established belonged to the plaintiff. She had there tools to be used for constructing on the lot, and also kitchen equipment. Besides the hut there were installed the so-called "socles" for the building. The defendant himself expressed that he arrived at the lot in October 1976, (the same month on which the complaint was originally filed); that the plaintiff immediately took him before the Guaynabo District Court. There, Judge Toro told the plaintiff that she had to file an "Injunction." She did so, and in the meantime the defendant continued to construct there, knowing that there was an action pending in the Court, as he had been duly summoned.

Rule 49.2 of Civil Procedure is a mechanism to clear the way for justice (*Scn. de Bravo González v. Secretary of the Treasury*, 106 P.R.R. 672). It is not however, a means to achieve the extension of terms of review from Judgment which is in essence what is pretended now in this case (See *Figueroa v. Banco de San Juan*, resolved on May 16, 1979, 79 J.T.S. 46 *González v. Chaves*, s103 P.R.R. 478; *Rodríguez v. Superior Court*, 102 P.R.R. 290). The use of this procedural mechanism has some limitations imposed by the Rule itself.

Said Rule provides, in the part that concerns us now, that:

> "...This rule does not limit the power of the Court to (a) entertain an independent action for the purpose of relieving a party from a judgment, order, or proceeding; (b) grant a remedy to a party who in reality has not been summoned; and (c) set aside a judgment for the reason of fraud upon the court."

We are not considering the situation contemplated in part (a) of the above-transcribed paragraph. The situation covered in part (b) was already adjudged when the Court considered the preceding Motion for Relief from Judgment. That would leave available for this case only what is covered under letter (c), the so-called fraud upon the court.

In these cases the limitation of the six-month term is not in effect (*G.A.C. Finance Corp. v. Rodríguez*, 102 P.R.R. 213; *Municipality of Coamo v. Superior Court*, 99 P.R.R. 932).

The defendant pretends to sustain the alleged fraud basing himself in that the plaintiff did not bring the truth before the Court's consideration at the hearing of the case. For that he brings to our attention some testimonies that do not deserve any credence whatever, concerning the plaintiff's false statements. The only thing that remains clear from the evidence is that the defendant --who through his negligent inattention upon being summoned and through his clear contempt, is indifferent to the judicial proceeding-- faces iminent eviction and is now trying to seek refuge in the Court, which he disregarded by continuing to construct with an attendant bad faith. He forgets that in the achievement of justice one cannot sanctify

manuevers such as the one carried out by him (*Soriano Tavárez v. Rivera Anaya*, resolved on April 30, 1979, 79 J.T.S. 42).

The defendant confuses (in his memorandum of authorities) the concept of domicile with that of possession. Furthermore, he tries to hand on to the argument of equity, and reclaim, for the first time at this stage, the right to be compensated for what he has built, basing himself on provisions of law that govern the right of accession. Although the bad faith in the case has been clearly pointed out, neither has the defendant in his favor these arguments in a Motion for relief from judgment.

The defendant also adduces that his eviction would constitute a deprivation of his property without the due process of law. Although this defense has also been brought forth late, its frivolity is evident. He was given the opportunity to bring before the Court all the defenses that he thought he had available in his favor. He preferred disregard. Now he cannot complain. "It is ridiculous that persons who invade illegally and without any right whatever in others land point as an error... that they were deprived of the enjoyment of their property..." (*Catalán González and Co. v. García*, 104 P.R.R. 380, 386).

On what constitutes fraud upon the Court, which is the only thing that we are called upon to resolve here, it is fitting to emphasize what was said in *Municipality of Coamo*, supra (p 939).

> "Rule 42.9 contemplates two species of fraud. It distinguishes them by establishing that in the case of fraud inter parties the motion for relief

should be filed within the term of six months. In the case of fraud upon the court, tha latter may set aside the judgment without any time limitation whatsoever. Moore makes the distinction between the two types of fraud as follows:

"Fraud upon the Court, we believe, should cover only those types of fraud whose effect or whose attempt is to defile the court itself, or is a fraud perpetrated by officers of the court, so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Fraud inter parties, per se, shall not to be considered fraud upon the court, but rather the remedy shall be left for a motion presented under Rule 60 (b) (3) or to an independent action."

"Our jurisprudence has acknowledge that fraud against the court is constituted by "the preparation, use, and presentation at the hearing of the case of false evidence obtained by the adversary party through bribery and the instigation to perjury..."

There is nothing in this case which permits us to conclude that the plaintiff incurred in fraud upon the Court.

The Motion for Relief from Judgment is hereby dismissed.

BE IT NOTIFIED.

Given at Bayamón, Puerto Rico, this the 28th day of February, 1980.

(Sgd.) ENRIQUE RIVERA SANTANA
Superior Judge

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen ~~hundred~~ eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Notice in Civil Case No. 76-2974 (505) on Possessory Injunction, issued by the General Court of Justice, Superior Court, Bayamón Part, on March 13, 1980.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

220APPENDIX VI

TRANSLATION FROM SPANISH

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT
BAYAMON PART

CIVIL NO.: 76-2974 (505)

ON: POSSESSORY INJUNCTION

EPIFANIA PEREZ

V.

BASILIO VEGA AND LUIS SANTIAGO ORTEGA
K/A "GUISO"

NOTICE

Georgina Candal, Esq.
Box 727, Guaynabo, Puerto Rico 00657
Antonio Cajigas Llamas, Esq., 142 Rodríguez Oquendo & 2B Severo Quiñones, Urb., Carolina, Puerto Rico 00630

Gentlemen:

Your are hereby notified that in regard to Motion for Reconsideration filed by the defendant Wilfredo Santiago the Hon. Judge has rendered the hereinbelow transcribed Order which is on file and of record as of this date.

Order: "Dismissed"

(Sgd.) Enrique Rivera Santana
SUPERIOR JUDGE

Bayamón, Puerto Rico, this the 12th day of March, 1980.

Rosa M. Carrillo
Clerk

I HEREBY CERTIFY: That this notice was mailed to the above-mentioned parties, to their respective addresses set forth therein, on this the 13th day of March 1980.

Bayamón, Puerto Rico, this the 13th day of March, 1980.

Nelly Cruz Core
Clerk

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Decision in Civil Case No. 0-79-455 on Certiorari, issued by the Supreme Court of Puerto Rico, on October 18, 1979.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX VII

TRANSLATION FROM SPANISH

IN THE SUPREME COURT OF PUERTO RICO

NO. 0-79-455

CERTIORARI

EPIFANIA PEREZ,
PLAINTIFF AND APPEALED

V.

BASILIO VEGA AND LUIS SANTIAGO ORTEGA,
DEFENDANT AND APPELLANT PARTY

DECISION

San Juan, Puerto Rico, October 18, 1979.

With regard to the foregoing request of certiorari, the same is hereby dismissed.

The Court thus resolves and the Clerk thus attests. Associate Justices Rigau and Negrón García did not participate.

Ernesto L. Chiesa
Clerk

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Decision in Civil Case No. R-80-131 on Review, issued by the Supreme Court of Puerto Rico, on May 15, 1980.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX VIII

TRANSLATION FROM SPANISH

IN THE SUPREME COURT OF PUERTO RICO

NO. R-80-131

REVIEW

EPIFANIA PEREZ GUZMAN,
PLAINTIFF AND APPEALED PARTY

V.

BASILIO VEGA AND LUIS SANTIAGO ORTEGA,
DEFENDANT AND APPELLANT PARTY

DECISION

San Juan, Puerto Rico, May 15, 1980.

With regard to the foregoing motion of reconsideration, the same is hereby dismissed.

The Court thus resolves and the Clerk thus attests. Chief Justice Trías Monge and Associate Justice Rigau did not participate.

Ernesto L. Chiesa
Clerk

(OFFICIAL SEAL)

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Motion requesting Translation and Certification of the opinions and orders rendered in this case No. R-80-131 on Review, issued by the Supreme Court of Puerto Rico, on June 6, 1980.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX IX

TRANSLATION FROM SPANISH

IN THE SUPREME COURT OF PUERTO RICO

NO. R-80-131

REVIEW

EPIFANIA PEREZ GUZMAN,
PLAINTIFF AND APPEALED PARTY

V.

BASILIO VEGA VEGA AND
LUIS SANTIAGO ORTEGA,
DEFENDANT AND APPELANT PARTY

Motion requesting Translation and Certification of the opinions and orders rendered in this case.

TO THE HONORABLE COURT:

The appellant appears hereby by the undersigned counsel, and very respectfully states, claims, and requests:

FIRST: That in this case the appellant party is preparing a writ of certiorari to be filed before the Supreme Court of the United States.

SECOND: That rule 23 (J) of the regulations of the Supreme Court of the United States requires that a writ of Certiorari be submitted with a copy of the orders and opinions rendered in the case by the state Court.

Rule 37 of the Regulations of the Supreme Court of the United States requires that when a record being filed before the Supreme Court is in a foreign language, it be translated under the authority of the lower Court.

THIRD: That the appellant party requires that, in order to comply with the aforementioned rule, this Honorable Court provide an official translation of the following opinions in this case:

1. Judgment rendered by the Bayamón Superior Court on March 27, 1978.

2. Eviction Order issued by the Bayamón Superior Court on March 27, 1978.

3. Order issued by the Bayamón Superior Court on April 5, 1978.

4. Decision issued by the Bayamón Superior Court on February 20, 1979.

5. Decision dismissing the Certiorari issued by the Supreme Court of Puerto Rico on October 18, 1979.

6. Decision issued by the Superior Court on February 28, 1980.

7. Order dismissing the Motion for Reconsideration of the Bayamón Superior Court of March 12, 1980.

8. Order dismissing the petition for Review issued by the Supreme Court of Puerto Rico on April 17, 1980.

9. Order dismissing the Motion for Reconsideration issued by the Supreme Court of Puerto Rico on May 15, 1980.

Wherefore, the appellant party very respectfully requests of this Honorable Court to, pursuant to rules 23 and 37 of the Supreme Court of the United States,

order and supply the translation of the aforesaid orders and decisions.

CERTIFICATE

I hereby certify that I have sent a true and exact copy of this motion to Atty. Cajigas Llanos at his address, 2-B Street Number 142, Severo Quiñones Urb., Carolina, P.R.

At San Juan, Puerto Rico, this the 6th day of June, 1980.

(Sgd.) GEORGINA CANDAL
GEORGINA CANDAL
FRANCISCA SANTIAGO NEGRON
Puerto Rico Legal Services
Box 727
Guaynabo, Puerto Rico

Department of State
San Juan, Puerto Rico

I, FRANCES RIOS DE MORAN, Undersecretary of State of Puerto Rico, HEREBY CERTIFY: That JOSEPH J. PALACIOS, who authorizes the attached translation into English of said instrument, is Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, and that his signature thereto affixed is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this the 14th day of July, A.D. nineteen hundred eighty.

FRANCES RIOS DE MORAN
Undersecretary of State

Department of State
San Juan, Puerto Rico

TRANSLATION CERTIFICATION

I, JOSEPH J. PALACIOS, Director of the Translation Office of the Department of State of the Commonwealth of Puerto Rico, HEREBY CERTIFY: That this is a true, full and exact English translation of a Decision in Civil Case No. R-80-131 on Review, issued by the Supreme Court of Puerto Rico, on June 12, 1980.

I assume no responsibility for the contents of the foregoing document.

Done at the City of San Juan, Puerto Rico, this the 14th day of July, 1980.

JOSEPH J. PALACIOS
Director
Translation Office

APPENDIX X

TRANSLATION FROM SPANISH

IN THE SUPREME COURT OF PUERTO RICO

NO. R-80-131

DECISION OF ENRIQUE RIVERA SANTANA, J., BAYAMON PART

REVIEW

EPIFANIA PEREZ GUZMAN
PLAINTIFF AND APPEALED PARTY

V.

BASILIO VEGA VEGA AND LUIS SANTIAGO ORTEGA,
DEFENDANT AND APPELLANT PARTY

DECISION

San Juan, Puerto Rico, June 12, 1980.

With regard to the preceding motion for reconsideration, dismissed; and the motion requesting a translation of documents, dismissed.

Court thus resolves and the Clerk thus attests.

Ernesto L. Chiesa
Clerk

(OFFICIAL SEAL)

80-81

Supreme Court, U. S.
FILED
SEP 22 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
PETITIONER

Vs.

EPIFANIA PEREZ
RESPONDENT

DOCKET NUMBER: 80-81
ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF PUERTO RICO

COUNSEL FOR RESPONDENT
ANTONIO CAJIGAS-LLAMAS
STREET 2-B NO. 142
URB. SEVERO QUIÑONES
CAROLINA, PUERTO RICO.
PHONE: 768-5450

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In the Supreme Court of the United States

WILFREDO SANTIAGO ORTEGA
Petitioner

Vs.

EPIFANIA PEREZ
Respondent

DOCKET NUMBER:
On writ of Certiorari from the Supreme Court
of Puerto Rico

OPPOSITION TO WRIT OF CERTIORARI TO THE HONORABLE COURT:

Now, comes Respondent before that Honorable Supreme Court, in Opposition to Writ of Certiorari filed by Petitioner on June 14, 1980. And most respectfully states:

I- OPINIONS DELIVERED BY THE COURT BELOW:

1. One January 26, 1977, Petitioner was held in contempt to court by the Superior Court, at Bayamón, Puerto Rico. Opinion not reported. (A-I).
2. On August 3, 1977, judgement rendered against Petitioner, by Superior Court at Bayamón, Puerto Rico ordering him to vacate the land and refrain from disturbing Respondent's rights. Opinion not reported.
3. On February 20, 1979, after a hearing to determine if Petitioner had been duly summoned, Superior Court sustained and reaffirmed judgement rendered August 3, 1977. Not reported.
4. On August 16, 1979, Superior Court, at Bayamón, Puerto Rico, denied motion requesting to stay Order to Vacate filed by Petitioner. Not reported. (A-II).
5. On October 18, 1979 the Supreme Court of Puerto Rico denied the Writ of Certiorari requested by Petitioner to review Superior

Court decision of February 20, 1979. Opinion not reported.

6. On December 20, 1979 the Supreme Court of Puerto Rico denied appeal to review decision of the Superior Court not to stay order to vacate which would come in effect December 7, 1979. This opinion is not reported. (A-III).
7. On February 28, 1980 the Superior Court of Puerto Rico denied motion to strike decree and order of August 3, 1977. This opinion is not reported.
8. On March 12, 1980 the Superior Court of Puerto Rico denied Motion to Reconsider Resolution of February 28, 1980. Opinion not reported.
9. On April 17, 1980 the Supreme Court of Puerto Rico denied the Writ of Review filed by Petitioner to revise Superior Court decree of February 28, 1980. Opinion not reported. (A-IV).
10. On May 15, 1980, Supreme Court of Puerto Rico denied Motion for Reconsideration of Supreme Court's decision of April 17, 1980. Opinion not reported.
11. On May 22, 1980, Supreme Court of Puerto Rico denied motion from Petitioner to retain mandate. Opinion not reported. (A-V).
12. On June 4, 1980, Superior Court of Puerto Rico denied request of Petitioner of Stay of Order to Vacate. Opinion not reported. (A-VI).

13. On June 12, 1980, Supreme Court of Puerto Rico denied Petitioner's Motion for Reconsideration based on new arguments. Opinion not reported. (A-VIII).
14. On June 12, 1980, Supreme Court of Puerto Rico denied Petitioner's motion requesting translation and certification of opinions and orders in the case. Opinion not reported.

II- CONCISE STATEMENT OF THE GROUNDS ON WHICH JURISDICTION SHOULD BE DENIED

1. Case in question falls under the laws of the Commonwealth of Puerto Rico.
2. There is no diversity of citizenship between the parties.
3. The case in question is solely based in a controversy between parties (private parties) contemplated under local substantive and procedural law.
4. Due process of law was guaranty to Petitioner under Article II, Section 7, of the Constitution of the Commonwealth of Puerto Rico.
5. If there was a federal question, which we doubt it, (Violation of the 5th and 14th Ammendments of the Constitution of Unites States of America), the same was not timely or properly raised.

III- CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

1. Rule 4.2 of Civil Procedure which corresponds to Federal Rule 4(b) of Civil Procedure. (A-VIII).
2. Rule 4.4 of Civil Procedure corresponding to Rule 4(d) of Civil Procedure (Federal Rules of Civil Procedure). (A-VIII).
3. Rule 8 of Civil Procedure which corresponds to Rule 10 of the Rules of Civil Procedure (Federal). (A-VIII).
4. Rule 10.1 of Civil Procedure corresponding to Rule 12(a) of the Federal Rules of Civil Procedure.
5. Rule 45.1 of Civil Procedure equivalent to Rule 55(a) of the Federal Rules of Civil Procedure. (A-VIII).
6. Rule 49.2 of Civil Procedure similar to Rule 60(b) of Federal Rules of Civil Procedure. (A-VIII).
7. Article II, Section 7, of the Constitution of the Commonwealth of Puerto Rico.
8. Law 600, approved by 81st. Congress on July 3, 1950.

IV- QUESTIONS PRESENTED FOR REVIEW

A)- **Was Petitioner duly summoned?**

B)- **Was Petitioner denied due process of law under the laws and the Constitution of the Commonwealth of Puerto Rico?**

C)- **Does that Supreme Court of the United States have jurisdiction in the case?**

V- STATEMENT OF THE CASE

Complaint against Petitioner was filed at Superior Court of Puerto Rico in Bayamon on October 21, 1976 under case Civil No. 76-2974. Summons were issued by the clerk of Court. Petitioner was served with the summons and copy of the complaint on November 13, 1976. Upon failure to contest complaint or enter any pleading, Petitioner was held in contempt to court and judgement enter against him on August 3, 1977. (See Page 39, of Petition, Appendix I of Petitioner). Lower court issue Order to Vacate on March 27, 1978 with the corresponding mandate to the court's marshall. (See Appendixes II and III, of Petitioner on Pages 41 and 43 of Petition). A year and twenty nine days, after judgement adverse to Petitioner was rendered and facing eviction, is the first time he comes before the court to question the validity of the judgement only. Lower court decided to set aside the judgement and scheduled a hearing after which judgement of August 3, 1977 was sustained. (See Appendix IV, of the Petitioner on Page 46 of the Petition), by way of the Resolution dated February 20, 1979. Petitioner filed a motion to reconsider and stay order to vacate, dated August 1, 1979, over five months after judgement was rendered on February 20, 1979 and the same was dismissed by the lower court, on August 13, 1979. Appeal by way of Certiorari was filed by Petitioner at the Supreme Court of Puerto Rico on September 24, 1979 and the same was dismissed by the Court on October 18, 1979. A third time Petitioner came before the lower court with a

motion to strike judgement rendered against him on August 3, 1977 on the grounds that the judgement was illegal because Respondent had committed fraud to the court. While a hearing set for the date of January 18, 1980 was pending, Petitionar appealed to the Supreme Court of Puerto Rico requesting that the court reversed the determination of the Superior Court. This appeal was dismissed on December 20, 1979. After the hearing of January 18, 1980 the court issued a Resolution dated February 28, 1980 and the judgement of August 3, 1977 remained in full force. (See Appendix V, of the Petitioner on Page 48 of the Petition). Dated March 7, 1980, for the fourth time, Petitioner filed a motion of reconsideration at the lower court to revise judgement of February 28, 1980. The motion was denied by the court below. Then on March 26, 1980, the Petitioner filed a writ of revision at the Supreme Court of Puerto Rico which was denied by the Court on April 17, 1980 and a motion of reconsideration dated May 1, 1980 was filed but denied by the Supreme Court on May 15, 1980. This was the fourth time Petitioner came before the Supreme Court. Not satisfied with the Supreme Court decisions, Petitioner once more and now for the fifth time, filed a motion to reconsider the whole matter based on alleged new reasons. The Court denied that motion on June 12, 1980. By the way, a motion of Petitioner, dated June 6, 1980, requesting the Supreme Court the Certification and Translation of Opinions and Orders in the case was also denied in the resolution issued on June 12, 1980. While litigating at the Supreme Court level, Respondent was also litigat-

ing at the Superior Court simultaneously. He filed a motion to stay order to vacate, which the lower court denied on June 4, 1980.

VI- FURTHER ARGUMENTS SUSTAINING DENIAL OF JURISIDCTION AND IN OPPOSITION TO THE ISSUANCE OF THE WRIT OF CERTIORARI

1. According to Rule 19, of the Supreme Court Rules, a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. This case does not involve a susbstantial federal question, nor there is a diversity of citizenship or is it contrary to decisions of that Honorable Court. As a controversy between private parties it falls and was decided purely under the provisions of the Rules of Civil Procedure, state laws and the Constitution of the Commonwealth of Puerto Rico. There is no conflict whatsoever with federal statutes or decisions of that Honorable Court or with applicable state laws.

Petitioner was duly summoned and served with copy of the complaint. He failed to answer the complaint or raised any defense which might assist him. After the lower court issue the order to vacate, and over a year's time from the date of the judgement, is that Petitioner comes before the court alleging that he had not been summoned or served with copy of the complaint, either under the name of Luis Santiago Ortega or that of Wilfredo Santiago Ortega, his real name. Court ordered a rehearing and held it on December 1978 and January 1979, after which judge-

ment of February 20, 1979 sustained and left in full force decision of August 3, 1977. (See Appendix IV of Petitioner, Page 46 of the Petition). With respect to wrongfully designating or indicating the name of a defendant in a civil action, the Supreme Court of Puerto Rico, rulled in the case of Colón Gandía Vs. Tribunal Superior, 1966, 93 DPR 225, the following:

> "Summoned in a case the person interested to implead or his authorized agent to that respect, the designation in an inapproriate form of the name of that person constitutes a mere technical error that may be corrected by the court." (Our translation.

Petitioner's name in the original complaint was indicated as Luis Santiago Ortega, known as Guiso. Under that name he was duly summoned and served with copy of the complaint. Failing to answer the complaint or to enter any allegations, he was held in contempt of court, and judgement rendered against him. Consequently order to vacate was issued. On September 1, 1978, a year and twenty nine days after judgement was rendered, Petitioner came before the court alleging that he was not the person indicated in the summons that his name was Wilfredo Santiago Ortega and hence, although he was living in the property, judgement should be reversed, because the court issued the judgement without jurisdiction over the person of the defendant. That was the only allegation made by the Petitioner. (See Appendix V of the Petitioner, specifically at Page 49 of the Petition). The lower court held a new hearing and denied the motion to reverse judgement, leaving in full force the judge-

ment of August 3, 1977. (See Appendix V, of the Petitioner, Page 48 of the Petition). The judicial pilgrimage of the case is well taken care of in the Resolution of the Superior Court dated February 28, 1980, (Appendix V of Petitioner), which clearly describes all the opportunities given to the Petitioner and summarizes his attitude (Last sentences of Appendix V to the Petitioner, Page 53 of the Petition) as follows:

> "The only thing that is clear from the evidence is that the defendant, whom for his negligent disregard when summoned and for his clear neglect and indifference to the judicial procedure, faces eviction, now tries to seek the covert of the court, which he disregarded when he continue building unlawfully. He forgets that in the implementation of justice such artifices as performed by him can not be justified." (Our translation).

Afterwards Petitioner started his judicial pilgrimage with different action both at the Superior Court and the Supreme Court of Puerto Rico. This time the Petitioner, as we have said, try to reopen the case by filing different causes of action. Practice condemned by the Supreme Court of Puerto Rico as stated in the case of Zambrana Vs. Tribunal Superior, 1971, 100 DPR 179, Page 181, and we quote:

> "The defense of res judicata in its aspect of fragmentation of a cause of action is applicable to all further claims between the same parties over the same matter. Avellanet Vs. Porto Rican Express, 64 DPR 693 (1945), Cruz Vs. Ortiz, 82 DPR 834 (1961). The purpose of this defense is to promote the conclusion of judicial controversies and avoid the continued hardships to a party with the suc-

> cessive filing of different claims related to the same matter."

An in Panamerican Match Inc. Vs. Sears, Roebuck and Co., 454 F2d 871 (1972) that Honorable Supreme Court, ruled on this same matter of fragmentation of causes of action within the same matter in which the claim was filed, thereby sustaining the doctrines established by the Supreme Court of Puerto Rico.

Petitioner was negligent in the exercise of his rights. He failed to raise all posible defenses, properly and timely. Instead of doing so, he prefer to questioned, later, the decisions of both the Superior and Supreme Courts, by claiming that the way in which the complaint was entitled and the solution of the case were in conflict and therefore judgement should be reversed. Also that Petitioner was deprived of the due process of law. With respect to the designation of the cause of action (What we may call title of the complaint) the Supreme Court of Puerto Rico in the case of Cruz Vs. Director de la Lotería, 1967, 94 DPR 260, stated the following and we quote:

> "No error is committed by a lower court while considering and injunction as a civil action and providing an adequate remedy to avoid damages to a plaintiff."

And in the case of Lebrón Velázquez Vs. Romero Barceló, 1974, 101 DPR 915, the Supreme Court of Puerto Rico, ruled:

> "The title given to a recourse should not restrain the court form providing a corresponding remedy."

Petitioner claims that the Supreme Court of Puerto Rico violated his rights under the the 5th and 14th Amendments of the United States Constitution, because he was denied a hearing. For the first time, after two years and almost ten months since judgement against him was rendered by the Superior Court on August 3, 1977, is that a Motion of Reconsideration stating the federal question, dated June 3, 1980, is filed. Definitely the federal question was not either timely or properly raised. Furthermore, the due process of law within Article II, Section 7, of the Constitution of the Commonwealth of Puerto Rico was fully at the disposal of the Petitioner. His failure to timely and properly raise objections or claim whatever rights he was entitled to , was his responsibility. He must bear the consequences of his negligent attitude as determined by the lower court in the Resolution issued on February 28, 1980. (See Appendix V of the Petitioner, Page 48 of the Petition). The due process clause, contained in the Constitution of the Commonwealth of Puerto Rico, has been interpreted by that Honorable Supreme Court of the United States, in the case of Figueroa Ruiz Vs. Delgado, 1966, 359 F. 2d 718, where the following was expressed, and we quote:

> "After the agreement and pursuant to P.L. 600 of the 81st. Congress, the interpretation and application of the guarantees of the due process of law of the Constitution of the Commonwealth of Puerto Rico is a prerogative of the Supreme Court of Puerto Rico."

This interpretation means that the Supreme Court of the United States of America acknowledges

the fact that constitutional matters within the scope of the Constitution of the Commonwealth of Puerto Rico are the responsibility of the Supreme Court of Puerto Rico and they will follow it, furthermore when there is not a federal question involved. That is, in order to assume jurisdiction, the federal question must have been brought to the consideration of the state's courts at he proper time and if there was a decision contrary to principles established by that Honorable Supreme Court then and only then jurisdiction will be assumed by the Court, when such claimed jurisdiction is based on an alleged federal question. Petitioner accepts (See II. Concise Statement of the Ground on Which Jurisdiction is Invoked, Page, 3, of the Petition) that on June 3, 1980, he filed a Motion of Reconsideration stating the federal question of violation of due process of law, before the Supreme Court of Puerto Rico. After the long and tedious pilgrimage of the case through both the Superior and the Supreme Courts of Puerto Rico, two years and ten months after the judgement of the Superior Court rendered on August 3, 1977 is the only and first time that Petitioner at the Supreme Court level raises the issue of a violation to the due process of law under the 5th and 14th Amendments of the U.S. Constitution. Such allegation as well as any other defenses available to the Petitioner should have been brought to the consideration of the Superior Court at the time the validity and legality of the summons was questioned. Therefore, litigating piecemeal constitutes a fragmentation of the case which both the Supreme Court of Puerto Rico and that Honorable Supreme Court of the United States had

determine constitutes Res Judicata. But perhaps the most important factor to consider is that the Supreme Court of the United States will have jurisdiction to review a State decision only if the federal point asserted as the basis for review was specially set up or claimed, of drawn in question. The record must disclose that the federal question was present in the case in the State court, and was presented to the State court for decision. It is not enough for counsel to think up some federal point after the last State court has acted. That is what happened in the case in question. The federal point was brought to the attention of the Supreme Court of Puerto Rico as a last stand with probably the intention to open the door through which they might step into the federal jurisdiction. But that attempt was to late, not timely or properly raised. Therefore jurisdiction and consequently the writ of certiorari should be denied. At this time we would like to make part of these Opposition to the Writ of Certiorari our arguments and allegations in the Opposition to Application for Stay of Order to Vacate, in those aspects which art pertinent to this opposition.

FOR THE ABOVE STATED REASONS, Respondent moves the Honorable Supreme Court of the United States of America to dismiss and denied the Writ of Certiorari on the basis of want of federal jurisdiction and award Respondent costs, interest, damages for delay and attorney's fees.

RESPECTUFULLY SUBMITTED.

Carolina, Puerto Rico, August 3, 1980.

ANTONIO CAJIGAS-LLAMAS
Cousel for Respondent
Rodríguez Oquendo esq. 2-B No. 142
Urb. José Severo Qui ones
Carolina, Puerto Rico 00630
Tel. 768-5450

PROOF OF SERVICE: I hereby certifies that three copies of the preceeding Opposition to Writ of Certiorari, has been forwarded to Counsel for Petitioner, María Dolores Fernós at her address Puerto Rico Legal Services, Inc., P.O. Box CM, Río Piedras, Puerto Rico, 00928.

ANTONIO CAJIGAS-LLAMAS

APPENDIX I

Estado Libre Asociado de Puerto R'co
TRIBUNAL GENERAL DE JUSTICIA
Tribunal
Sala de ~~TRIBUNAL SUPERIOR~~

SALA [illegible]

EPIFANIA PEREZ CUZMAN
Demandante

Vs.

BASILIO VEGA VEGA Y OTROS
Demandado

Civil Núm. 76 2974 ACCION CIVIL

Sobre:

~~ACCION CIVIL~~

ORDEN DE SEÑALAMIENTO

REBELDIA

Se señala la vista de este caso ~~en auxilio~~ para el día 9 de marzo de 1977, a las 9:00 de la mañana en el salón de sesiones 1 de este Hon. Tribunal.

En BAYAMON, P. R. a 26 de enero de 1977

POR ORDEN DEL TRIBUNAL.

Secretario
[illegible] FLORES

Por: ISABEL NAVEDO
Subsecretario

APPENDIX II

Estado Libre Asociado de Puerto Rico
TRIBUNAL GENERAL DE JUSTICIA
TRIBUNAL Superior
Sala de Bayamón

Epifania Pérez Guzmán

Vs.

Basilio Vega Vega Y Luis Santiago Ortega c/p Quiso

CIVIL NUM. 79-2674(504)

SOBRE: Acción Civil (Injunction Posesorio)

NOTIFICACION

Lic. Antonio Cajigas Llamas-Rodríguez Oquendo-Esq. 2B-142,Urb. Severo Quiñones- Carolina,Puerto Rico 00630

Lcda. Carmen I. Navas-Apartado 727-Guaynabo,Puerto Rico 00657

Señores:

Notifico a ustedes que en relación con (1) Moción solicitando que no se emita orden de lanzamiento y otros extremos, radicada por Wilfredo Santiago Ortega c/p Quiso y (2) Moción en oposición a otra, radicada por la parte demandante

el Hon. Juez dictó la Ordenes *que se transcribe a continuación, la cual ha sido archivada en autos en el día de hoy:*

Ordenes:

1- No ha lugar. Notifíquese.

2- Se resolvió.

Notifíquese. A 13 de agosto de 1979.

(Fdo.)José F. Rodríguez Rivera
Juez Superior

Bayamón, *Puerto Rico, a* 16 *de* agosto *de 19*79.

Luis R. Amaral
Secretario

APPENDIX III

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifanía Pérez Guzmán, Demandante y recurrida, v. Basilio Vega Vega y Luis Santiago Ortega, Demandado y recurrente.	Núm. R-80-131	Revisión

RESOLUCION

San Juan, Puerto Rico, a 17 de abril de 1980.

A la anterior petición de revisión, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. Los Jueces Asociados señores Rigau y Martín no intervinieron.

Ernesto L. Chiesa
Secretario

APPENDIX IV

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifania Pérez Guzmán, Demandante y recurrida, v. Basilio Vega Vega y Luis Santiago Ortega, Demandado y recurrente.	Núm. R-80-131	Revisión

RESOLUCION

San Juan, Puerto Rico, a 22 de mayo de 1980.

A la solicitud de retención de mandato, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. El Juez Presidente señor Trías Monge y los Jueces Asociados señores Rigau y Martín no intervinieron.

Ernesto L. Chiesa
Secretario

APPENDIX V

Estado Libre Asociado de Puerto Rico
TRIBUNAL GENERAL DE JUSTICIA
Tribunal Superior
Sala de Bayamón

EPIFANIA PEREZ GUZMAN

VS

BASILIO VEGA VEGA Y OTRO

Civil Núm. 76-2974 *505*

Sobre: Acción Civil
Injunction Posesorio

O_R_D_E_N

Vista la moción radicada por la parte demandada en el caso de epígrafe sobre **Moción Informativa y solicitud de paralización de Orden de Lanzamiento**

el Tribunal resuelve NO HA LUGAR.

Regístrese y notifíquese.

Bayamón, Puerto Rico, a 4 de junio de 19 80.

(Fdo.) Enrique Rivera Santana
Juez Superior

APPENDIX VI

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifanio Pérez Guzmán Demandante apelada v. Basilio Vega Vega y Luis Santiago Ortega Demandado apelante	Núm. 0-79-598	Apelación procedente del Tribunal Superior, Sala de Bayamón, Hon. Juan José Ríos Martínez, J. Acción Civil

RESOLUCION

San Juan, Puerto Rico, a 20 de diciembre de 1979.

Al anterior escrito de apelación, no ha lugar.

Lo acordó el Tribunal y certifica el Secretario. El Juez Asociado señor Rigau no intervino.

Ernesto L. Chiesa
Secretario

APPENDIX VII

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Epifania Pérez Guzmán Demandante y recurrida v. Basilio Vega Vega y Luis Santiago Ortega Demandado y recurrente	Núm. R-80-131	Resolución de Enrique Rivera Santana, J., Sala de Bayamón Revisión

RESOLUCION

San Juan, Puerto Rico, a 12 de junio de 1980.

A la anterior moción de reconsideración, no ha lugar y a la moción solicitando traducción de documentos, no ha lugar.

Lo acordó el Tribunal y certifica el señor Secretario.

Ernesto L. Chiesa
Secretario

APPENDIX VIII
RULES OF CIVIL PROCEDURE

Rule 4.2:
Similar to Rule 4(b) of Federal Civil Procedure:

El emplazamiento deberá ser firmado por el secretario, llevará el nombre y sello del tribunal con especificación de la sección y sala, y los nombres de las partes; se dirigirá al demandado; hará constar el nombre, dirección y teléfono del abogado del demandante, si lo hubiere, o en su defecto la dirección del demandante, y el plazo dentro del cual estas reglas exigen que comparezca el demandado, apercibiéndole que de así no hacerlo podrá dictarse sentencia en rebeldía en su contra concediendo el remedio solicitado en la demanda.

Rule 4.4:
Similar to Rule 4(d) of Federal Civil Procedure:

El emplazamiento en la demanda se diligenciará conjuntamente. El demandante proporcionará a la persona que haga el diligenciamiento las copias necesarias. Dicha persona, al entregar la copia del emplazamiento, hará constar al dorso de aquella sobre su firma, la fecha y el lugar de dicha entrega y el nombre de la persona a quien se hizo la misma. El diligenciamiento se hará de la manera siguiente:

(a) A una persona mayor de edad, entregándole copia del emplazamiento y de la demanda, a ella personalmente, o a un agente autorizado por ella o designado por ley para recibir emplazamiento.

Rule 8.1:
Similar to Rule 10(a) of Federal Civil Procedure:

Toda alegación tendrá un encabezamiento en el que se consignará el nombre del tribunal, con especificación de la sección y sala, el título del pleito, el nmero de presentación y su denominación de acuerdo con la Regla 5.1. En la demanda, el título del pleito incluirá los nombres de todas las partes; pero en las demás alegaciones será suficiente exponer el nombre del primer litigante de cada parte con una referencia demostrativa de la existencia de otras partes.

Rule 10.1:
Similar to Rule 12(a) of Federal Civil Procedure.

Un demandado deberá notificar su contestación dentro de veinte (20) días de habérsele entregado copia del emplazamiento y de la demanda. Si el emplazamiento se hiciere conforme a lo dispuesto en la Regla 4.5, el demandado deberá notificar su contestación dentro de los treinta (30) días de haberse publicado el edicto. La parte a la cual se notifique una alegación que contenga una demanda contra coparte en su contra, notificará copia de su contestación a la misma dentro de diez (10) días de habersele sido notificada.

Rule 45.1:
Equivalent to Rule 55(a) of the Federal Rules of Civil Procedure.

Cuando una parte contra la cual se solicite una sentencia que concede un remedio afirmativo haya

dejado de presentar alegaciones o de defenderse en otra forma segn se dispone en estas reglas, y este hecho se pruebe mediante declaración jurada o de otro modo, el secretario anotará su rebeldía.

El tribunal a iniciativa propia o a moción de parte podrá anotar la rebeldía a cualquier parte conforme a la Regla 34.2 (b) (3).

Dicha anotación tendrá el efecto de que se den por admitidas las aseveraciones de las alegaciones afirmativas, sujeto a lo dispuesto en la Regla 45.2(b).

La omisión de anotar la rebeldía no afectará la validez de una sentencia dictada en rebeldía.

Rule 49.2:
Similar to Rule 60(b) of the Federal Rules of Civil Procedure.

Mediante moción y bajo aquellas condiciones que sean justas, el tribunal podrá relevar a una parte o a su representante legal de una sentencia, orden o procedimiento por las siguientes razones:

(1). . .

(3) Fraude (incluyendo el que hasta ahora se ha denominado intrínseco y también el llamado extrínseco), falsa representación u otra conducta impropia de una parte adversa;

(4). . .;

(5). . .;

(6). . .

. . . Esta regla no limita el poder del tribunal para (a) conocer de un pleito independientemente con el propósito de relevar a una parte de una sentencia, orden o procedimiento; (b) conceder un remedio a una

parte que en realidad no hubiere sido emplazada; y (c) dejar sin efecto una sentencia por motivo de fraude al tribunal.

. . .